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MIDRASH AND MISHNAH

A STUDY IN THE EARLY HISTORY OF THE HALAKAH

BY

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TO THE MEMORY

OF

MY FATHER

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I

THE teachings of the Halakah, as preserved to us in the tannaitic literature, have been given by teacher to disciple and transmitted from generation to generation in two different forms, namely, Midrash and Mishnah. The one, Midrash, shortened from 'Midrash Torah',[1] represents the Halakah as an interpretation and exposition of the Torah. It teaches the Halakah together with its scriptural proof, that is, in connexion with the passage from the Pentateuch, on which it is based or from which it can be derived, thus forming a halakic commentary to the written law contained in the Pentateuch. This form is especially used in our halakic Midrashim, Sifra, Sifre, and Mekilta, but it is also found in some parts of the collections

[1] The term מדרש from דרש 'to search, inquire, investigate', means 'research, inquiry', and מדרש תורה accordingly means an inquiry into the meaning of the Torah, an exposition of all laws and decisions which can be discovered in the words of the Torah. In this sense the term 'Midrash Torah' is used in the Talmud (b. Ḳiddushin 49b) where it designates the halakic interpretation or exposition of the Torah. As we now have many Midrashim to the Torah of a haggadic character, the term Midrash Torah would be too indefinite to designate an halakic exposition of the Torah. A haggadic exposition of the Torah would also be a Midrash Torah. The more specific term Midrash Halakah is therefore now used to designate a halakic interpretation of the Torah. See the writer's article 'Midrash Halakah' in the *Jewish Encyclopaedia*, VIII, pp. 569-72.

of our Mishnah and Tosefta, as well as in many so-called Midrash-Baraitot scattered in both the Palestinian and the Babylonian Talmud. The other form, the Mishnah, represents the Halakah as an independent work, giving its dicta as such, without any scriptural proof, and teaching them independently of and not connected with the words of the written law. For this reason the Mishnah is also designated as 'Halakah' or in the plural 'Halakot', that is, merely rules or decisions. This form is especially used in our collections of the Mishnah and the Tosefta, but it is also found in many Baraitot scattered in the Talmud and in some parts of our halakic Midrashim.[2] (See D. Hoffmann, *Zur Einleitung in die halachischen Midraschim*, Berlin, 1887, p. 3.)

Of these two forms of teaching the Halakah, the Midrash is the older and the Mishnah the later. The Midrash was the original form, and was used in the earliest times, in the very beginnings of the Halakah. This is quite self-evident, as the Midrash was in reality the origin of the Halakah. The dicta of the Halakah had their source in the Midrash Torah, i.e. an inquiry into the full meaning of the written law from which alone the earliest Halakah derived its authority.

The returned Babylonian exiles, constituting the new Jewish community, reorganized by Ezra and Nehemiah, accepted the written Torah, so to speak, as their constitution. They entered into a covenant by oath, to keep and follow the laws of Moses as contained in the book read

[2] As the difference is only in form, it is not surprising to find that very many of the Halakot are cast in both forms. Very often the same Halakot which are found in the halakic Midrashim together with their scriptural proofs are also found in the Mishnah and Tosefta without scriptural proofs as independent Halakot.

to them by Ezra (Neh. 8 and 10. 30). The Book of the Law, therefore, as read and interpreted by Ezra, was for them the only authority they were bound to follow. Whatever was not given in the book, they were not bound to accept. All the religious practices and the time-honoured customs and even the traditional laws, if there were such, had to receive the sanction of the written Law in order to be absolutely binding upon the people. This means, that the practices, customs, &c., had to be recognized as implied in the written Law or contained in its fuller meaning. The teachers, therefore, interpreted the written Law so as to include in it or derive from it all those customs and practices. Thus, the teachings of the Halakah (for all such rules, customs, practices, and traditional laws constituted the Halakah) had to be represented as an interpretation or an exposition of the written Law. This, as we have seen above, means, to be given in Midrash-form.

It is expressly stated of Ezra that he explained and interpreted the Torah to the people, and that he set his heart to search (לדרוש) the meaning of the Law, to interpret it, and to teach in Israel statutes and judgements (Ezra 7. 10). We learn from this, that Ezra taught only the Book of the Law with such interpretations as he could give to it. His successors, the Soferim, who were the earliest teachers of the Halakah, did the same. They gave all their teachings merely as interpretations to the Book of the Law. Indeed, the very name Soferim was given to them because it characterized their manner of teaching. This name סופרים is derived from ספר 'the Book'. It means 'Bookmen', and it designated a class of people who occupied themselves with the Book of the Law, who interpreted it and who based all their teachings upon this book exclu-

sively (Frankel, *Hodegetica in Mischnam*, p. 3, and Weiss, *Dor*, I, p. 47).

For a long period this Midrash-form was the only form used in teaching the Halakah. This is confirmed by reliable traditions reported to us in Rabbinic literature. One such report is contained in the following passage in the Pal. Talmud (Moed ḳaṭan III, 7, 83^{b}):

איזהו תלמיד חכם? חזקיה אמר כל ששנה הלכות ועוד תורה אמר ליה ר' יוסי הדא דאת אמר בראשונה אבל עכשיו אפילו הלכות.

'Who is to be considered a scholar? Hezekiah says, One who has studied the Halakot as an addition to and in connexion with the Torah.[3] Said to him R. Jose, What you say was [correct] in former times, but in our day, even [if one has studied merely detached] Halakot, [he is to be regarded as a scholar].' Here it is plainly stated that in earlier times (בראשונה) the only form of teaching Halakot

[3] The term ועוד means 'addition', as, for instance, in the phrase: ויהודה ועוד לקרא 'Is it necessary to mention the custom in Judea as an addition to the law indicated in the Scriptures?' (b. Ḳiddushin 6a). It is also found in the plural form, ועודות 'additions' (b. Erubin 83a). The expression ועוד תורה here means, therefore, as an addition to the Torah, i. e. to teach the Halakot not independently but as additions to the passages in the Torah from which they are derived. In almost the same sense it is also interpreted by the commentator Pne Mosheh, *ad loc.*

It should also be noticed that in b. Ḳiddushin 49a Hezekiah says that to be called a student (שונה) it is enough if one has studied merely detached Halakot. This, however, does not contradict his saying in our passage in the p. Talmud. For תלמיד חכם is a scholar of a higher degree of learning. From b. Megillah 26b it is evident that the student called שונה is not as advanced as the scholar called תלמיד חכם. To be considered a scholar, such as is designated by the name תלמיד חכם, Hezekiah tells us, one must study the Halakot in the Midrash-form. For even after the Mishnah-form had become popular, the Midrash was considered the proper form to be used by advanced scholars. See Guttmann, *Zur Einleitung in die Halakah*, Budapest, 1909, p. 20.

was as an addition to and in connexion with the written Law, that is to say, in the Midrash-form. In those days, therefore, one could not acquire a knowledge of the Halakah, i. e. become a scholar, except by learning the Midrash, for the very good reason that the halakic teachings were not imparted in any other form.

Sherira Gaon who no doubt drew upon reliable sources likewise reports in his Epistle (Neubauer, *M. J.*, ch. I, p. 15) that 'in the earlier period of the second temple, in the days of the earlier teachers, all the teachings of the Halakot were given in the manner in which they are found in our Sifra and Sifre', that is, in the Midrash-form.[4] Modern scholars[5] have, accordingly, recognized it as an established historic fact that the Midrash was originally the exclusive form in which all teachings of the Halakah were given.

Not only were those Halakot which were derived from some scriptural passage by means of interpretation taught in Midrash-form, that is to say in connexion with the passages which served as proof, but also such Halakot and teachings as were of purely traditional origin—rules, practices, and customs that had no scriptural basis at all were likewise taught in this manner. The latter were taught in conjunction with some scriptural passage with which they could in some manner be connected, or together with certain written laws to which they were related, either as

[4] The passage in the letter of Sherira Gaon reads thus: וספרא וספרי דרשי דקראי נינהו והיכן רמיזי הילכתא בקראי ומעיקרא במקדש שני ביומיה דרבנן קמאי לפום הדין אורחא הוו תני להון. They taught 'them', i. e. the Halakot, only in the form used in our Sifra and Sifre, i. e. Midrash.

[5] N. Krochmal in *More Nebuke Ha-Zeman*, porta XIII, Lemberg, 1851, pp. 166–7; Z. Frankel in *Hodegetica in Mischnam*; Weiss, *Dor Dor we-Dorshow* and *Mabo la-Mechilta*; Oppenheim, 'Toledot ha-Mishnah' in *Beth Talmud*, II; D. Hoffmann, *Die erste Mischnah*, Berlin, 1882; and others.

corollary or modification. (See D. Hoffmann, *Die erste Mischnah*, Berlin, 1882, pp. 5–7.) This procedure was necessary, because the only recognized authority was the written Book of the Law which the teachers used as their text-book in teaching. However, in teaching out of this text-book, they gave not only the meanings of words and the explanations of each written law, but also additional rules as well as modifications to some laws. All of this may be included in an exposition (מדרש) of the Torah and could properly be taught in connexion with the text. Thus the Midrash-form could continue to be in exclusive use for teaching the Halakah, even after the latter, in the course of time, came to include traditional laws and customs, as well as new institutions and decrees issued and proclaimed by the teachers themselves in their capacity as religious authorities.[6]

The Mishnah-form, on the other hand, is of a much later date. It was introduced a long time after the Midrash-form[7] and was used side by side with it. At

[6] Weiss, *Mabo la-Mechilta*, p. iv, remarks about the Soferim: ישבכלל תרגומם ופירושם למקרא כללו גם דברים אשר מקורם הגזירה והתיקון. Although the instance mentioned by him as proof for his statement is not a teaching of the Soferim (see below, note 55), yet the statement as such is correct. The Soferim or those who only taught in the Midrash-form could include in their teachings altogether new laws and decrees, issued by themselves as religious authorities, by connecting them with the scriptural laws. Only we may assume that it rarely happened that they taught a traditional law or a decree of their own merely in connexion with some scriptural law. In most cases, the Soferim, who had charge of the text of the books of the law, could manage to indicate in the text itself, by means of certain signs and slight alterations, any traditional custom or decree of their own. Thus, these same decrees could be taught as interpretations of the written law. See N. Krochmal, *op. cit.*, p. 167. Compare also below, notes 36 and 37.

[7] Georg Aicher (*Das Alte Testament in der Mischnah*, Fr.-i.-Br., 1906, pp. 165 ff.) stands alone in the assumption that the Mishnah is older than

no time did the Mishnah-form become the exclusive method for teaching the Halakah, because the Midrash never ceased to be in use.[8] At just what date this Mishnah-form was introduced, that is to say, just when the teachers of the Halakah began, for the first time, to teach Halakot independently of the written law, has, to my knowledge, not yet been ascertained. Sherira Gaon who, as we have seen, informs us that at some period in earlier times the Midrash-form was the only one in use, does not state exactly how long that period lasted, and does not mention when the Mishnah-form was introduced. Neither is there any other gaonic report to tell us when this happened.[9] Hoffmann (*op. cit.*, pp. 12–13) states that, according to the views held by the Geonim, the Mishnah-form was first introduced in the days of Hillel and Shammai, but he fails to bring proof for this statement. To my knowledge, there is no foundation in gaonic literature for the views ascribed by Hoffmann to the Geonim. Hoffmann bases his theory on the spurious

the Midrash. This cannot be maintained. His statement (p. 64) that 'the appearance of scriptural proof in connexion with the Halakah was due to the radical changes effected by the catastrophe of the year 70', hardly needs any refutation. The many Halakot in the Midrash form given by teachers in the time of the Temple as well as the disputes between the Sadducees and Pharisees, hinging upon different interpretations of scriptural passages as bases for their respective Halakah, ought to have shown Aicher to what extent Midrash was used before the year 70.

[8] We must emphasize this fact against the theory advanced by Weiss and Oppenheim and also by Jacob Bassfreund in his *Zur Redaction der Mischnah* (Trier, 1908, pp. 19–24), that there was a time when the Midrash-form was altogether abandoned, and the teachings of the Halakah given exclusively in Mishnah-form. We shall see that this theory is untenable (below, notes 15, 22, and 53).

[9] The account given in the letter of Sherira stops very abruptly. See the discussion at p. 108 of this essay.

responsum found in *Shaare Teshubah*, No. 20, and ascribed to Hai Gaon,[10] in which the following passage is found:

דע מימות משה רבינו עד הלל הזקן היו שש מאות סדרי משנה כמו שנתנם ה"ב"ה למשה בסיני ומן הלל ואילך נתמעט ונתמסכן העולם וחלשה כבודה של תורה ולא תקנו מהלל ושמאי אלא ששה סדרים בלבד.

'Know, that from the days of Moses our Teacher until Hillel the Elder, there were six hundred orders of Mishnah just as God gave them to Moses on Sinai. However, from the time of Hillel on the world became impoverished, and the glory of the Law was diminished, so that, beginning with Hillel and Shammai, they arranged only six orders.' It is evident that this responsum cannot be taken to represent a reliable gaonic tradition, as it is apparently based on the haggadic passage in Ḥagigah 14 a, and is accordingly of merely legendary character. Aside from this, the passage does not say what Hoffmann has read into it. It does not even deal with the origin of the Mishnah-form. If anything, we can see from this responsum that its author, quite to the contrary, assumed that the Mishnah-form was very old, and that it was given to Moses on Sinai.[11] He deals merely with the origin of six

[10] This responsum had been added by some later hand to the responsa of Hai Gaon, but does not belong to the Gaon. Comp. Harkavy, *Studien und Mitteilungen*, IV, p. xiv. The fact that this report is repeated in Seder Tannaim we-Amoraim, (Breslau, 1871, p. 29) and in Sefer Hakanah, p. 81 b, and in S. Chinon's Sefer Kritot (Book Yemot Olam, Amsterdam 1709, p. 20 a) does not in the least alter its legendary character and cannot make it more reliable, for the authors of all these works drew from one and the same source. This source cannot be of a more reliable character than the Midrash Abkir, from which the Yalkut (Genesis, sec. 42) quotes the statement that Methuselah studied 900 orders of Mishnah, משותלח צדיק גמור היה והיה שונה ט' מאות סדרי משנה.

[11] The belief that the Mishnah was given to Moses on Sinai is repeatedly

orders of Mishnah which he assumed to have been extant in the days of Hillel and Shammai. These six orders were in his opinion but a poor small remnant of the six hundred orders which Moses received from God on Sinai and which were extant till the days of Hillel when the world became impoverished and the glory of the Torah diminished. Hoffmann arrives at his interpretation of this responsum by arbitrarily giving two different meanings to one and the same term used by the author twice in one sentence. He states (p. 13) that when the Gaon speaks of the 'six hundred orders of Mishnah', he is using the term 'Mishnah' in a broad sense to designate traditional law in the Midrash-form and not in the Mishnah-form, but when the Gaon speaks of the reduced 'six orders' extant in the days of Hillel and Shammai, he uses the term 'Mishnah' in a narrow sense to designate only independent Halakot in the Mishnah-form. This distinction is extremely arbitrary. Furthermore, when Hoffmann concludes his argument with the remark (*ibid.*, p. 13) that 'No doubt the six orders of Mishnah introduced in the days of Hillel and Shammai were, like our present Mishnah, composed in the form of independent Halakah, and by this *new form* were distinguished from the earlier form of teaching', he no longer

expressed in the Haggadah. See b. Berakot 5a and p. Ḥagigah I, 8, 76d. In the Pirḳe de-Rabbi Eliezer, ch. xlvi, it is said that during the forty days which Moses spent on the mountain, receiving the Law, he studied the Scriptures (מקרא) in the daytime and Mishnah at night. In Pesiḳta Rabbati V (Friedmann, p. 14b) it is said that Moses wished to have the Mishnah written, but God told him that in order to distinguish Israel from other nations it was better that the Mishnah should be given to Israel orally, so that the other nations should not be able to claim it for themselves. See also Tanḥuma, *Ki-Tissa* (Buber, pp. 58b and 59a), and p. Ḥagigah, *l. c.* The author of our responsum had as his authority such haggadic sayings when he spoke of the Mishnah which God gave to Moses on Sinai.

gives the views of the author of the responsum, but his own. And these views are absolutely wrong.[12]

Thus we see that there is no mention in gaonic literature,[13] of the time when this innovation in the form of teaching the Halakah took place. Neither is there any report in talmudic[14] or gaonic sources about the cause of this innovation. We are not told why it was necessary or desirable to introduce a new form of teaching Halakah alongside of the older Midrash-form.

Modern scholars have attempted to answer these questions; both to fix the date and to give the reasons for this innovation in the method of teaching. However, the various theories advanced by these scholars are all unsatisfactory. They are the result of mere guess-work—without solid proof or valid foundation. It will be shown

[12] There is no doubt that at the time of Hillel and Shammai there were no Mishnah-collections like our Mishnah. The responsum in Shaare Teshubah, § 187, which tells us that when a certain Gaon died they found that he had the six orders of the Mishnah of the days of Hillel and Shammai, which had been hidden away, is spurious and legendary. See S. D. Luzzatto, *Beth ha-Ozar*, pp. 55b–56a. Although there were in the times of Hillel and Shammai collections of Halakot composed in Mishnah-form, this form was not new to them and could not be the characteristic which distinguished them from the form of teaching used before. For, as we shall see, there had been even before Hillel and Shammai collections of independent Halakot in the Mishnah-form. And if Hillel himself composed a Mishnah-collection, he did not arrange it in order, and did not divide it into tractates as Pineles (*Darkah shel Torah*, pp. 8–9) and Bassfreund (*Zur Redaction der Mischnah*, p. 25) assume. The arguments brought forward by the latter to prove that Hillel's Mishnah-collection was arranged and divided into tractates are not convincing.

[13] On Saadya's opinion see further below, pp. 113 ff.

[14] There is, however, as we shall see in the course of this essay, a report in the Talmud stating until when the Midrash-form was in exclusive use. This talmudic report has been overlooked or else not correctly understood, for not one of the scholars dealing with the problem of fixing the date of the beginning of the Mishnah-form has referred to it.

that some are based upon inaccurate reasoning, and all of them are in contradiction to certain established historic facts.

We have already seen that the theory which Hoffmann ascribes to the Geonim has no foundation in gaonic literature and that it is altogether Hoffmann's theory. But, no matter whose it is, the theory itself cannot be maintained.[15] In the first place, there were Mishnah-collections before the time of Hillel and Shammai, as Rosenthal has proved (*Ueber den Zusammenhang der Mischnah*, Erster Teil, 2te Aufl., Strassburg, 1909). In the second place, the introduction of a new form necessarily precedes any collection of Halakot composed in this new form. It must be quite plain that there were individual, detached Halakot taught in the Mishnah-form (and not in the Midrash-form) before any collection of such detached Halakot could be made. Accordingly, if we assume with Rosenthal (*op. cit.*, p. 111) that a collection of such independent Halakot in the Mishnah-form was already arranged in the time of Simeon ben Shetaḥ, we have to go still farther back in fixing the time when the teachers first began to separate the Halakah from its scriptural proof and teach it independently, as Mishnah. This would bring us to about one hundred years before the time of Hillel and Shammai. Not only is this theory of Hoffmann wrong in respect to

[15] Compare also Bassfreund (*op. cit.*, pp. 18 ff.) who likewise seeks to refute Hoffmann's theory. Some of Bassfreund's arguments, however, are not sound. He is altogether wrong in assuming that for a long time before Hillel the Mishnah was the exclusive form used in the teaching of the Halakah, and that Hillel was the first to reintroduce the Midrash-form. He confuses the development of the Midrash methods which were furthered by Hillel with the use of the Midrash-form which had no need of being introduced by Hillel since it was never abandoned (see above, note 8, and below, note 22).

the date given for the introduction of the Mishnah-form, but it is also unsatisfactory in regard to the cause of this innovation.

According to this theory, the Mishnah-form was introduced in order to assist the memory in mastering the contents of the traditional law.[16] However, it is difficult to see how the teachers could have considered the new form of greater aid to the memory than the old form. This new form is on the contrary quite apt to make it more difficult for the memory. It seems to us that it is less of a task for the memory to retain Halakot taught in the Midrash-form. The written Law, being the text-book, each passage in it, as it is being read, helps, by mental association, to recall all the halakic teachings based upon it. On the other hand, it is much harder to remember detached Halakot given in an independent form, especially when they are not arranged systematically or topically but merely grouped together. This, we must keep in mind, was actually the mode of arrangement used in the earlier Mishnah collections.[17]

Hoffmann himself must have felt that this theory was not satisfactory, for later in his book he advances another

[16] The same reason is also given by Frankel and Weiss. They all seem to have been influenced by the haggadic sayings found in the Talmud, sayings which exaggerate the number of Halakot known to former generations.

[17] Hoffmann makes the mistake of assuming (*op. cit.*, pp. 13, 15, and 48) that simultaneously with the separation of the Halakot from their scriptural basis came the grouping of such detached Halakot into orders and treatises, as we have them. But this is absolutely wrong. The earlier Mishnah went through many different forms of grouping before it was finally arranged according to subjects and divided into treatises and orders. See the writer's article in the *Jewish Encyclopaedia*, VII, p. 611. The opinions expressed by the writer there on page 610 (following Hoffmann) are hereby retracted.

and altogether different theory (*op. cit.*, p. 48). According to this second theory, the innovation was not made for the purpose of aiding the memory, and was not made in the days of Hillel and Shammai. Here Hoffmann assumes that the Mishnah-form was first introduced in the days of the later disciples of Hillel and Shammai. The purpose of the innovation, he explains, was to maintain the unity of the Halakah by minimizing the differences of opinion and eliminating the disputes about the halakic teachings which arose among these very disciples of Hillel and Shammai. These disputes, Hoffmann tells us, were in many cases only formal, namely, concerning the underlying Midrash or the scriptural proof for the halakic teaching. The traditional Halakah, as such, was agreed upon by all the teachers. That is to say, there was no dispute about the transmitted rules and decisions which all the teachers received alike. The teachers, however, often did disagree as to the scriptural passages and their interpretations whereon these received halakic decisions were based. One teacher would derive a certain Halakah by interpreting a given passage in a certain manner. Another teacher would deduce the same Halakah from another passage, or even from the same passage but by means of another interpretation. Thus, as long as the Halakah was taught only in Midrash-form there existed many differences of opinion between the teachers, not in regard to the halakic decisions or rules in themselves but in regard to their midrashic proof and support. The teachers of those days who were very anxious to maintain harmony among themselves and unanimity in their teachings therefore decided to separate the Halakah from the Midrash and to teach it independently of the scriptural proof or support. In other

words, they introduced the Mishnah-form—the Halakah as an independent branch of learning. By this innovation all the differences of opinion and disputes about the midrashic proof necessarily disappeared. Thus uniformity was restored in teaching the Halakah, and harmony was established among the teachers.

This second theory of Hoffmann is even less tenable than the first. In the first place, it fixes the date for the introduction of the Mishnah even later than the first theory. Consequently, in this respect it is refuted by the same arguments that were brought against the first theory. We have seen above that there were Halakot in Mishnah-form, even collections of such Halakot, at a much earlier date. Furthermore, the explanation of the cause for the innovation put forth in this theory presents a palpable error in reasoning. It presupposes that the decisions of the Halakah, as such, were older than their midrashic connexion with the scriptures, and that at some earlier time they had been transmitted independently of scriptural proofs. For this reason the teachers could well be unanimous in accepting the Halakah and yet find cause for dispute as to methods of proving certain halakic decisions from the scripture by means of the Midrash. But this means nothing else than that there were some Mishnahs, that is, independent Halakot before the disputes about the scriptural proofs caused their separation from the Midrash. This line of reasoning contradicts itself. It sets out to find the cause for the first introduction of the Mishnah-form, but assumes that before this introduction some Halakot had already been transmitted in Mishnah-form. In other words, this so-called first introduction was really not a first introduction.

If they had taught only in Midrash-form, the alleged evil results which the Mishnah-form, according to Hoffmann, was to remedy could never have arisen. It would have been impossible for the teachers to agree upon a halakic decision, and at the same time to disagree about its scriptural proof. Since every teacher received each Halakah in the same Midrash-form, that is, as an interpretation of, or connected with, a certain scriptural passage, every one who remembered the decision must have remembered the form in which he received it, that is, the scriptural passage with which it was connected. It is very improbable that a teacher remembering the decision, but having forgotten the scriptural basis, would have supplied another scriptural proof therefor, and then disputed with his colleagues who remembered the right passage on which this Halakah was based. If he did forget the passage for which the Halakah was an interpretation, the mere mention of that passage by his colleagues must have brought it back to his memory. It is evident that there could be no universal acceptance of a Halakah together with disputes regarding its proofs, unless such a Halakah had been taught apart from its proof. This, however, was not done, as long as the Midrash-form was in exclusive use, that is, as long as the Halakah was merely taught as a commentary on the text of the Law.[18]

[18] This would hold true even if we should believe in the genuineness of the so-called הלכות למשה מסיני, that is, that there had been given oral laws to Moses on Sinai and transmitted independently of the written law. For, as Hoffmann himself states (*op. cit.*, p. 7), even all the traditional teachings were taught together with the scriptural laws and connected with them in the Midrash-form. All through the period of the Soferim, and according to Hoffmann till the time of the disciples of Hillel and Shammai, such traditional laws would somehow be connected with the Scriptures. The mental attitude of the teachers was not in the direction

Quite as unsatisfactory is the theory advanced by Z. Frankel (*Hodegetica in Mischnam*, pp. 6, 7, and 10). According to this theory, the innovation of teaching detached Halakah in the Mishnah-form was made by the last group of Soferim.[19] This was done to overcome three difficulties which Frankel tells us existed in those days. In the first place, the halakic decisions based upon the individual passages had increased to such an extent that the task of studying and teaching them in the Midrash-form became very difficult. In the second place, the absence of inner logical connexion between the individual dicta of the Halakah made its study a work of mere

of separating such traditional laws from the scriptural passages with which they had for centuries been connected. This would have remained their attitude even if they had realized that such a connexion was merely artificial (see below, note 27). No differences of opinion were therefore possible as to how such traditional laws were to be connected with the Scripture.

It should be noted that Hoffmann seems to have subsequently abandoned both his theories. In his introduction to his translation of the Mishnah, Seder Nezikin (p. x, note 3), he states that according to the Palestinian Talmud the so-called Number-Mishnahs were already compiled and redacted by the men of the Great Synagogue. He refers to the passage in Shekalim, V, 48c, which, like Weiss and Oppenheim, he misinterprets. See below, note 26.

[19] N. Krochmal (*op. cit.*, pp. 174-5) also assumes that even the last of the Soferim began to teach independent Halakot (so also Pineles, *Darkah shel Torah*, pp. 8–9). Like Frankel, Krochmal also gives as the reason the increased number of the Halakot and new decisions which could no longer be connected with the Scripture in the form of the Midrash. There is, however, a great difference of opinion between Krochmal and Frankel as to dates. Krochmal extends the period of the Soferim until about 200 B. C., assuming that the Simon mentioned in Abot as 'one of the last survivors of the Great Synagogue' is Simon II, the son of Onias II. Krochmal therefore designates him as the last of the Soferim and the first of the Mishnah teachers, the Tannaim (*loc. cit.*, p. 166). According to Frankel, the last member of the Great Synagogue was Simon the Just I, about 300 B. C. This Simon, then, was the last of the Soferim in whose days the Mishnah was introduced (*Hodegetica*, pp. 68 and 30-31).

mechanical memorizing—a very tiresome and repulsive procedure for the intelligent student. In the third place, the Pentateuch gives the laws pertaining to one subject in many different places. As the Midrash follows the Pentateuchal order, there could be no systematic presentation of all the laws on any one subject. The laws on one subject, for instance, Sabbath, being derived from widely separated passages in the Pentateuch, had to be taught piecemeal, each decision in connexion with its scriptural basis. For all these reasons, Frankel tells us, the last group of the Soferim decided to separate the Halakot from their scriptural bases and to teach them in the new Mishnah-form systematically arranged according to subjects.

Like Hoffmann, Frankel assumes that the plan of arranging the Halakot according to subject-matter was coincident with the very introduction of the Mishnah-form, so that the very earliest Mishnah collections must have been arranged topically. This, as we have seen, is incorrect. The topical arrangement of the Mishnah is of later date. It was preceded by other forms of grouping peculiar to the earlier Mishnah collections. Frankel himself credits R. Akiba with the systematic arrangement of Halakah according to topics (*op. cit.*, p. 115). He also qualifies by the following remarks his former statement concerning the Soferim and their arrangement of the Halakah according to subjects: 'We have stated in the preceding chapter that the teaching [of the Halakah] according to subjects began at the end of the period of the Soferim. Nevertheless, a long time undoubtedly passed before all [the Halakot] that belonged to one subject were brought together under one heading. Very often while dealing with one subject they would [not keep

strictly to it but] drift to another and pass from one halakic theme to another . . . . R. Akiba, however, began to arrange the old Halakot to put each in its proper place and [under the topic] to which it belonged.'[20] If, however, the order in the Mishnah before R. Akiba was not strictly according to subjects, as Frankel here admits, and if some Halakot bearing on one subject would often be treated among Halakot dealing with another subject, what advantage was there then in separating the Halakot from the Midrash and teaching them in the Mishnah-form? The shortcomings of the Midrash-form, according to Frankel, consisted in the fact that the Halakot of one subject could not be taught connectedly but were interrupted by Halakot belonging to another subject. However, according to Frankel's own statement, the same defect was inherent in the Mishnah-form up to the time of Akiba.

Taking up another statement of Frankel, it seems difficult to realize why the study of the written laws together with all the Halakot derived from them, as is done in the Midrash-form, should be such dry mechanical work of the memory, and so repulsive to the intelligent student. One would be inclined to think that the study of the Halakot in the abstract Mishnah-form, especially when not arranged systematically, would indeed be a far more mechanical work and far more tiresome for the student. Again, according to Frankel, it was the alleged lack of inner logical connexion between the single Halakot

[20] והנה כבר כתבנו בפרק הקודם הלימוד ע"פ הענינים התחיל סוף ימי הסופרים, אבל בלתי ספק עברו ימים רבים טרם נאספו כל השייכים אל ענין אחד תחת דגל אחד, והרבה פעמים בעסקם בענין זה נמשכו מענין לענין ומהלכה להלכה . . . ור"ע החל לסדר ההלכות הישנות על מכונן וגבולם.

which made the Midrash-form inadequate for teaching purposes. However, this absence of inner logical connexion is merely alleged by Frankel, but not proved. If we should even grant that in the Midrash-form the Halakot were not always logically connected and coherently presented, the earlier Mishnah certainly did not remedy this evil. The earlier Mishnah collections were characterized by the most arbitrary modes of arrangement. Halakot bearing upon different themes and altogether unrelated in subject-matter were often grouped together under artificial formulas. Examples of these earlier modes of arrangement have been preserved even in the present form of our Mishnah as for instance, in the so-called Number-Mishnahs or the Ên-ben-Mishnahs. The Midrash-form certainly established a better connexion between the individual Halakot than did these earlier arrangements of the Mishnah. The mere fact that many Halakot belong to one and the same chapter or are grouped around one and the same passage of the Scriptures, establishes a better connexion between them than the accident that they can all be presented under one formula.

Aside from all these arguments, the fundamental position of Frankel can hardly be maintained. In the time of the last group of the Soferim, the halakic material could not have grown to such an extent as to make it impossible to use the Midrash-form and necessitate the innovation of a new form of teaching. The mere volume of the halakic material could by no means have brought about this change of form. This is evident from the fact that our halakic Midrashim, Sifra, Sifre, and Mekilta, present in Midrash-form a mass of halakic material far greater in volume than was extant in the days of the Soferim. Thus we see

that all the reasons which Frankel gives for the introduction of the Mishnah-form are insufficient and could not have been the cause of the innovation.

In conclusion, Frankel's admission that the teachers continued to use the Midrash-form even after the introduction of the Mishnah-form [21] is the strongest refutation of his own theory. If the Midrash-form had so many disadvantages, if it was both tiresome for the student and inadequate for presenting the Halakot systematically, why was it not altogether abandoned? How did the new form obviate the evils of the old form if the latter continued in use?

The theory propounded by Weiss in his *Mabo la-Mekilta*, pp. iv and v, and in his *Dor*, I, p. 66, is somewhat of an improvement upon the ideas of Frankel. Like Frankel, he believes that the Mishnah-form was introduced by the later Soferim, and that the reason for this change was the large increase of halakic material. He avoids two of the mistakes that Frankel made. In the first place, he does not confuse the innovation of teaching detached Halakot in the form of Mishnah with the arrangement of the latter according to subjects. Nor does he assume that the Midrash-form continued in use, after the Mishnah-form was introduced. According to Weiss, the Midrash-form was abandoned because it proved inadequate. It was hard for the student to remember the great mass of Halakot that existed at that time, when taught in the Midrash-form. The teachers, therefore, felt the need of inventing another form which would help the

[21] *Op. cit.*, p. 7, he says: ודע כי אף שבירדו להם דרך לעצמם בענין הלכה לא עזבו דרך הראשונים לגמרי אבל חיברו גם הם מאמרים למקרא.

memory retain the increased number of halakic teachings. This help for the memory they found in separating the Halakot from their scriptural bases and in expressing them in short, concise phraseology, and in arranging them according to a number-formula. The saying of Simon the Just, 'The world rests upon *three* things, &c.' (Abot I, 2), and the three Halakot mentioned in Eduyot VIII, 4, which according to Weiss are soferic Halakot, merely reported by Jose ben Joezer, are cited by Weiss in support of his theory that the Soferim taught detached Halakot expressed in concise terms and arranged according to number formulas. Weiss (*Mabo la-Mekilta*, p. v, note 7) admits, however, that the innovation was unsuccessful. The teachers, he tells us, soon found that the Mishnah-form, although superior to the Midrash, in being more easily memorized, had many other disadvantages. As a result, they had to return to the older form of the Midrash after they had abandoned it for a time.[22]

This admission of Weiss that the advantages expected

[22] In this assumption, that the Midrash-form had for a long time been abandoned and supplanted by the Mishnah, and that later on objections to the Mishnah-form caused a return to the Midrash, Weiss is followed by Oppenheim ('Ha-Zuggot we-ha-Eshkolot' in *Hashaḥar*, VII, pp. 114 and 116), and by Bassfreund (see above, note 15). It is strange that while these scholars cannot account satisfactorily for one change that really took place, namely, from the exclusive use of the Midrash to the admission of the Mishnah-form, they assume another change which never took place, namely, a return from a supposed temporary exclusive use of the Mishnah to the old Midrash. We have already seen that the Mishnah-form was never in exclusive use, for the Midrash continued to be used side by side with it. Consequently there could have been no return from Mishnah to Midrash. But we shall see that the very reason which Weiss, Oppenheim, and Bassfreund give for the return to the Midrash, namely, the opposition of the Sadducees, was rather the cause for the further departure from the Midrash-form and the extension of the use of the Mishnah-form (see below, notes 72 and 73).

from the new form were not realized, is in itself a strong argument against his theory. Further, we have seen above that the necessity for aiding the memory could not have been the reason for introducing the Mishnah-form. The words of the scriptural text with which the Halakot were connected in the Midrash-form offered sufficient help to the memory. We have also seen above that in the days of the Soferim the halakic material was not so large as to necessitate new forms and arrangements. The Soferim never gave their teachings in any other form but in the Midrash, namely, as interpretations and additions to the written laws. They never arranged them in any other way except in the order of the scriptural passages to which they belonged. The two passages, cited by Weiss, do not refute this statement. The saying of Simon the Just in Abot is not a halakic teaching but a maxim of the same character as the other wisdom literature of that time. We can draw no conclusions from it as to the form of halakic teachings of that day. As for the three Halakot mentioned in Eduyot, these will later be shown to have been the decisions of Jose ben Joezer himself. Consequently they do not prove anything concerning the form of halakic teaching used by the Soferim.

Oppenheim [23] offers a theory that is in reality but a combination of the views examined above. However, he makes a very correct observation concerning the date of the innovation. According to Oppenheim, the Mishnah-form was first introduced during or immediately after the Maccabean uprising. As a result of the persecutions incident to the Maccabean revolution, the study of the

[23] 'Tolédot Ha-Mishnah' in *Beth Talmud*, II, p. 145, and also in his 'Ha-Zuggot we-ha-Eshkolot' in *Hashaḥar*, VII, pp. 114–15.

law was neglected and the knowledge of it decreased. The teachers, therefore, decided to separate the Halakot from their scriptural bases and to teach them independently, in order to save them from oblivion ('Toledot ha-Mishnah', in *Beth Talmud*, II, p. 145). They chose this form either because they thought that in this form it would be easier for the student to remember the Halakot, or because they, the teachers themselves, no longer remembered the scriptural bases for many Halakot.

The first of these two reasons is identical with the one given by Frankel and by Weiss, which has been found insufficient. The second one is similar to the one given in Hoffmann's second theory, and, as we have seen, is not plausible. For, if they had not previously studied Mishnah but received the Halakot only together with their scriptural bases, it is hardly possible that the teachers could forget the latter and yet remember the former. The remembered Halakot would have recalled to them the scriptural passages in connexion with which they were received.

It seems that Oppenheim himself felt that neither his own nor Frankel's nor Weiss's theory was sufficient to solve the problem. He therefore offered another solution of the problem, and this is practically a denial of the fact that there is a problem. After stating that the Soferim taught in the Midrash-form and those who followed them introduced the new form of abstract Halakot, that is Mishnah, he contradicts himself by adding the following remark:[24] 'But in my opinion there is no doubt that the Soferim who taught [the Halakah] as a commentary on the Scriptures

[24] ולדעתי אין כל ספק כי הסופרים אשר אחזו בפירוש המקראות גם כן ההלכות לא הניחו ידם 'Ha-Zuggot we-ha-Eshkolot', *l. c.*, p. 114.

[i.e. Midrash] also taught independent Halakot.' He then proceeds to prove that the Soferim had independent or abstract Halakot in the form of Mishnah.[25] According to this statement there is no problem at all. We need not account for any change in the form of teaching Halakah or explain the reasons for the innovation of the Mishnah, for there was no change and no innovation. The two forms, Midrash and Mishnah, were evidently used together from the earliest times, the Midrash possibly to a larger extent than the Mishnah. This would indeed be the best solution of the problem and would remove all difficulties. The only obstacle in the way of its adoption is that it is contradicted by all historic reports. It is against the tradition that in earlier times all the teachings of the Halakah were given in the Midrash-form only. This tradition, we have seen, is indicated in the discussion of Jose and Hezekiah mentioned in the Palestinian Talmud (Moed ḳaṭan) and is expressly mentioned by Sherira Gaon. It is also out of harmony with the generally accepted opinion that the

[25] This is also the stand taken by Halevi who goes even further and maintains (*Doroth ha-Rishonim*, I, chap. xiv, pp. 204 ff.) that in the main our Mishnah had already been composed and arranged by the Soferim, but he does not prove his statements. At the most, his arguments could only prove that there had been many Halakot and decisions in the days of the Soferim, and that the earliest Tannaim in our Mishnah in their discussions seek to define and explain these older Halakot and decisions. But it does not follow that these Halakot and decisions were already in the days of the Soferim composed in the Mishnah-form. These Halakot and decisions were originally given in the Midrash-form, as definitions or interpretations of written laws. The later teachers, that is, the earlier Tannaim, discussed and commented upon these decisions and Halakot of their predecessors which they had before them in Midrash-form. Later on, when these decisions and Halakot became separated from the Midrash, they were arranged in the Mishnah-collections as independent Halakot, together with all the comments and explanations given to them by the Tannaim, and in this form they are also found contained in our Mishnah.

Soferim, as the name implies, imparted all their teachings only in connexion with the written book of the Law. It is, further, against an absolutely reliable report in the Babylonian Talmud which, as we shall see, tells us not only that the older form of teaching the Halakah was the Midrash, but also gives us the period of time during which it was in exclusive use.

Thus we see that all these theories examined above have not succeeded in finding a real solution for our problem. None of the theories have given the exact time or the real cause for the introduction of the Mishnah-form.

Probably the strangest feature of the problem is the silence of the talmudic literature about this important innovation. This silence is all the more remarkable when we come to realize that this was not merely a change in form, but an innovation that had great influence upon the development of the Halakah and had great bearing upon the validity of its authority.

The theory proposed in this essay offers what appears to us to be a satisfactory solution for this many-sided problem. In the first place it determines the exact time when the innovation of teaching independent Halakot was introduced. In the second place it describes the conditions that compelled the teachers to make so radical a change. And finally it explains why no explicit report is preserved in talmudic sources regarding this great development in the teachings of the Halakah. This theory I shall now propound.

II

WE have seen above that the name 'Soferim' designates a class of people who occupied themselves with 'the Book' and taught from that 'Book' alone. This name has been applied to the earliest teachers of the Halakah, because they imparted all their teachings in connexion with the Book of the Law, either as an exposition of it or as a commentary on it, that is to say in the form of the Midrash. This, we have seen, is asserted by tradition and agreed upon by almost all the modern scholars. There is absolutely no reason for assuming that any of the teachers belonging to the group of the Soferim, whether the earlier or later, departed from this peculiar method of teaching. For the name Soferim was given to the teachers because of this method of teaching and continued in use only as long as they adhered exclusively to this method. As soon as the teachers ceased to occupy themselves exclusively with the Book of the Law and its exposition and began to teach abstract Halakot also, the name applied to them was no longer Soferim but 'Shone Halakot' or Tannaim (see especially J. Brüll, *Mebo ha-Mishnah*, Frankfurt a. M., 1876, II, p. 2). The haggadic saying of Rabbi

Abahu[26] (in Yerushalmi Shekalim V, 1, 48 c) which Weiss and Oppenheim cite as a proof of their contention that the Soferim taught abstract Halakot in the Mishnah-form, does not refer to the Soferim at all. It does not say anything about their methods or form of teaching. It refers to the Kenites, who in 1 Chronicles 2. 55 are identified with the families of Soferim, the inhabitants of Yabez, the Tir'atim, the Shim'atim, and Sukatim. In all these names the Haggadah seeks to find attributes for the Kenites, indicating some of their peculiar characteristics. R. Abahu here gives an haggadic interpretation of the name Soferim applied to the Kenites in the same fanciful manner as the other names, Tir'atim, Shim'atim, and Sukatim are interpreted in Sifre, Numbers 78 (Friedmann 20 a).

Oppenheim advances still another argument to prove that the Soferim taught abstract Halakot. Since many of the traditional laws designated as הלכה למשה מסיני must have been transmitted by the Soferim, it follows (so Oppenheim) that the Soferim taught independent traditional laws in Mishnah-form. This is not at all convincing. Granted that there were such unwritten laws handed down from Moses to the Soferim, and that these formed part of their religious teachings, it does not necessarily follow that these traditional teachings

[26] The passage in p. Shekalim reads as follows: אמר ר' אבהו כתיב ומשפחות סופרים יו"ב יעבץ מה תלמוד לומר סופרים אלא שעשו את התורה ספורות ספורות ה' לא יתרומו חמשה דברים חייבים בחלה וגו'. Weiss (*Dor*, I, p. 66) refers to this saying in the words: והטיבו אשר דברו בזה חכמי התלמוד (ירוש' שקלים) שהסופרים עשו את התורה ספורות, and Oppenheim (*Hashaḥar*, VII, p. 114) states: ובירושלמי אמר ר' אבהו שהיו קורין אותן סופרים לפי שעשו את התורה ספורות כגון ה' לא יתרומו וגו'. Both of them erroneously take this haggadic saying as a characterization of the methods of the Soferim and as a reason for their name.

were given in the Mishnah-form. They could as well have been given as additional laws in the Midrash-form, together with the scriptural passages with which they had some sort of relation, though not based on or derived from them.[27] It is therefore absolutely certain that the change in the form from Midrash to Mishnah was not made during the period of the Soferim.

The period of the Soferim came to an end with Simon the Just I about 300–270 B.C. In Abot 1, 2 he is designated as being 'of the last survivors of the men of the great Synagogue', which means that he was the last of the Soferim. During the time of this Simon the Just I, who still belonged to the Soferim, there could have been no Mishnah. We have, therefore, to look for the origin of the Mishnah-form in the times after Simon I, that is, after 270 B.C. We have thus gained at least this much. We have fixed the *terminus a quo*, the beginning of the period during which the innovation of the Mishnah-form could have been made. We have now to find the *terminus ad quem*, namely, the last possible date for the introduction. In seeking to determine this latter date, the only proper way would be to find the oldest authentic Halakah mentioned in talmudic literature without its scriptural proof, that is, in the Mishnah-form. In determining the date when

[27] If, for instance, the regulations about the colour of the thongs and the form of the knot of the phylacteries were traditional laws given to Moses on Sinai, ה״למ״מם, as is claimed by some of the Rabbis of the Talmud (Menahot 35 a, b), these could have been nevertheless taught together with the passage in Deut. 6. 8. The teachers could have stated that the commandment 'and thou shalt bind them' is explained by tradition to mean, first, to tie them only with black thongs, רצועות שחורות; and second, that the phylacteries must be square, מרובעות; also that the knot must be of a certain shape; and lastly, that the letter Shin, ש, must be impressed on the outside, &c., &c.

such a Halakah was given, we shall *eo ipso* have determined the date when the change in the form had already been made and the Mishnah-form was already in use. This seems to be the simplest and only logical method of procedure. Strange as it may seem, this method has not been followed by any of the scholars who have attempted to solve our problem.

The first teacher in whose name we have independent Halakot is Jose b. Joezer,[28] who died about 165 B. C.[29] The sayings of Simon the Just and Antigonos (Abot 1, 2, and 3) are merely wisdom maxims and not halakic teachings. Connected with the name of Jose, however, we have three halakic decisions mentioned without any scriptural proof, i.e. in Mishnah-form (Mishnah Eduyot VIII, 4). The authenticity of these Halakot is not to be doubted. They are certainly decisions given by Jose ben

[28] Frankel's statement, כי הלל ושמאי הם הראשונים אשר על שמם באו הלכות במשנה ובברייתא, that 'Hillel and Shammai were the first teachers in whose name Halakot are mentioned in the Mishnah and Baraita' (*Hodegetica*, p. 38) is, to say the least, surprising. We find Halakot from all the four preceding Zuggot. Thus a Halakah is mentioned in the name of Shemaiah and Abtalion concerning the quantity of 'drawn water' (מים שאובים) that is sufficient to disqualify the Miḳwah (Eduyot I, 3), not to mention the Halakot in regard to the slaughtering of the passover sacrifice on sabbath which Hillel is said to have received from them and taught in their name (p. Pesaḥim 33 a and b. Pesaḥim 66 a). Simon b. Shetaḥ mentions a law in the name of the חכמים in regard to the punishment of false witnesses (Makkot 5 b). From Joshua b. Perahia we have a Halakah in regard to wheat brought from Alexandria (Tosefta Makshirin III, 4), and in the name of Jose b. Joezer we have the three Halakot (M. Eduyot VIII, 4).

[29] The date of Jose's death can only be approximated. He died when Alcimus was still in power (see Genesis r. LXV, 22). Probably he was among the sixty men whom the Syrian general Bacchides killed at the instigation of Alcimus (1 Mac. 7. 16). Alcimus died 160 B. C. (see Büchler in the *Jewish Encyclopaedia*, I, 332–3).

Joezer.[30] In the form in which they are preserved they have already been taught by his colleagues or disciples. Thus we find that in the last days of Jose b. Joezer or soon

[30] Jose b. Joezer's authorship of these Halakot was first questioned by Dr. Jacob Levy in *Ozar Neḥmad*, III, p. 29. In the course of his discussion, however, Levy arrives at the conclusion that these Halakot were really given by Jose b. Joezer of Zeredah. Following Levy's first suggestion, Graetz (*Monatsschrift*, 1869, pp. 30–31) and after him Büchler (*Die Priester und der Cultus*, p. 63) assume that these three Halakot belong to some later teacher whose name was likewise Jose b. Joezer, although such a teacher is otherwise not known. There is, however, no necessity for seeking any other author than the well-known Jose b. Joezer of Zeredah who is expressly mentioned in our sources. The fancied difficulties of ascribing the decisions to Jose b. Joezer of Zeredah disappear on close examination. The main difficulty is said to be the difference in time between the date of Jose and the date of the Eduyot-collection. How could Jose b. Joezer of Zeredah, who died before 160 B. C., have testified before the teachers in Jabneh about 100 C. E. on that memorable day when Gamaliel II was deposed from the presidency, and when according to a talmudic report (Berakot 27 b) the Eduyot-collection was arranged? Were this a real difficulty, it could easily be removed by assuming with Levy (*op. cit.*, p. 36) that the word משום 'in the name of' was left out in our Mishnah, and that the text ought to read העיד משום רבי יוסי בן יועזר איש צרידה 'A teacher testified in the name of Jose b. Joezer of Zeredah'. However, no real difficulty exists. The theory that all of the Halakot contained in our Eduyot-collection are testimonies that were deposed before the teachers at the assembly at Jabneh, cannot be maintained. Our Eduyot-collection contains other Halakot than those testified to before the assembly at Jabneh. It contains also Halakot that were not even discussed at that assembly. To the latter class belong the three Halakot of Jose b. Joezer (see H. Klueger, *Ueber Genesis und Composition der Halakoth-Sammlung Eduyoth*, Breslau, 1895). It is not necessary to assume, as Klueger (*l. c.*, p. 84) does, that these decisions had been found in written form in the archives. These Halakot were simply known to the teachers just as the other sayings and teachings of the Zuggot were known to them. They had been transmitted orally and studied by heart, and at the time when the Eduyot-collection was composed or redacted, these three Halakot were incorporated in it. Compare also Hoffmann in his commentary on Mishnah Eduyot, *ad loc.*

The other difficulties in these three Halakot will be considered later in the course of this essay, when we come to the discussion of the Halakot themselves.

after his death some Halakot were already taught without any scriptural proof, that is, in the Mishnah-form. Accordingly we have found the *terminus ad quem* for the innovation of the Mishnah-form.

We now pass to a consideration of the particular point of time in this period when the new form was introduced. We have good reasons for believing that these decisions of Jose are not only the first mentioned, but in all likelihood the first ever taught in Mishnah-form. Indeed, a reliable report in the Talmud, as well as certain indications in gaonic traditions, points to the last days of Jose as the time when the change in the form of teaching was made. This talmudic report is given in Temurah 15b by Samuel, but it is undoubtedly an older tradition which Samuel merely reported. It reads as follows: [31] כל אשכולות שעמדו להן לישראל מימות משה עד שמת (ימות?) יוסי בן יועזר היו למדין תורה כמשה רבינו מכאן ואילך לא היו למדין תורה כמשה רבינו 'All the teachers who arose in Israel from the days of Moses until the death, or the last days, of Jose b. Joezer studied the Torah as Moses did, but afterwards they did not study the Torah as Moses did'. The discussion that follows in the Talmud endeavours to explain the meaning of this report. Here we learn that the report was not understood to mean that the teachers until the time of Jose's death were in possession of as many laws as Moses had. Nor was it understood to say that they were all of one opinion and had no doubtful or disputed Halakot. The report, so the discussion ends, can only be understood to say that they taught in the

[31] The correction suggested by Graetz (*Monatsschrift*, 1869, p. 23) to read עד ימות יוסי 'till the days of Jose', instead of עד שמת יוסי 'till Jose died', is very plausible.

same manner in which Moses taught, מינמר הוו נמירי להו כמושה.

We are not told what this method was and what it means to study or teach in the manner of Moses, but it is evident that this method can only be the Midrash-form. To give all the Halakot as interpretation of the written word means to study or teach like Moses did. Assuming, as the Rabbis did, that all the interpretations given in the Midrash are correct explanations and definitions of the written Law, all the teachings given in the Midrash-form were really contained in the words of Moses. And Moses must have taught them in the same manner in which they are taught in the Midrash. For Moses must have read to the people the written laws and interpreted the full meaning of each and explained each passage or each word of the Torah. That the phrase 'to study in the manner of Moses' is used to indicate the Midrash-form, can also be seen from another passage in the Babylonian Talmud. In Yebamot 72 b we read that Eleazar b. Pedat refuted an opinion of R. Johanan by quoting a scriptural passage and giving an interpretation to it. R. Johanan, thinking that R. Eleazar, in his argument, was making use of an original interpretation, characterizes his method in these words: ראיתי לבן פדת שיושב ודורש כמשה מפי הגבורה 'I see that the son of Pedat studies in the manner of Moses'. Simon b. Lakish, however, informs R. Johanan that this argument was not original with R. Eleazar, but was taken from a Midrash-Baraita in Torat Kohanim, as it is indeed found in our Sifra (Tazria' I, Weiss 58 b). We see, thus, that to study or teach in the Midrash-form, as is done in our Sifra, is characterized as being 'in the manner of Moses' (יושב ודורש כמשה). The report in Temurah 15 b,

accordingly, tells us that until the death or the last days of Jose all the teachers taught in the Midrash-form, which is called 'in the manner of Moses'.[32]

This seems also to have been the tradition among the Geonim, though for reasons of their own they did not care to express themselves distinctly about this question. We

[32] This report in the Talmud might perhaps be confirmed by the report about the religious persecution in the time of Antiochus Epiphanes. Among the many prohibitions against Jewish religious practices devised by the Syrian ruler for the purpose of estranging the Jews from their religion, which are mentioned by the authors of the Books of Maccabees (1 Macc. ch. 1, and 2 Macc. ch. 6), we do not hear of any special prohibition against teaching the Law, as was the case in the Hadrianic persecutions (b. Abodah zarah 17b–18a, compare Graetz, *Geschichte*, IV, 4, pp. 154 ff.). On the contrary, we learn from the saying of Jose b. Joezer, who lived at that time, that no such prohibition was enacted. For Jose said, 'Let thy house be a meeting-place for the wise: sit amidst the dust of their feet, and drink their words with thirst' (Abot I, 4). Evidently the wise teachers could meet unmolested in private places, and could impart their religious teachings. Yet there is no doubt that the aim and the tendency of the Syrian government were to suppress the religious teachings and to make the Jews forget their Law. We hear that the Books of the Law were rent in pieces and burned with fire, and that the king's command was that those people with whom the Book of the Law would be found should be put to death (1 Macc. 1. 56–7; Josephus, *Antiquities*, XII, 3, § 256). Evidently the persecutors believed that to burn the books of the Law and to punish any one who possessed them was sufficient to prevent the study of the Law. This was a very correct surmise. Since all teachings were given in the Midrash-form, that is, as an exposition and explanation of the Book of the Law, it followed that to take away the Books of the Law meant to effectually prevent any religious instruction. It was to meet this peculiar situation that Jose uttered his wise saying. Inasmuch as many of the Books of the Law were burnt, and as it was extremely dangerous to use those that had been secretly saved, Jose advised the people to make every home a place where the wise teachers might meet, and where one might listen to their words of instruction even without books.

These peculiar conditions may in some degree have helped to accustom the teachers to impart religious instruction altogether apart from the Book of the Law, namely in Mishnah-form.

have seen above that Sherira, in describing the period during which the Midrash-form was in exclusive use, employs the term מעיקרא במקדש שני, but does not define how long this 'earlier period of the second Temple' lasted. However, we shall arrive at a more exact interpretation of this vague term by comparing its usage in a responsum of R. Zemah Gaon. In this responsum [33] the following statement occurs: כל משנה שהיו ישראל דורשין במקדש, סתם היה ולא היה בו שם חכם 'All the traditional law (משנה is here used in its broader sense) which they used to teach in the Midrash-form, שהיו דורשין, in the time of the Temple, was anonymous, and no individual teacher is named or connected therewith'. The time which Zemah Gaon has in mind and which he designates as במקדש cannot include the whole period of the second Temple. Many names of individual teachers living in the time of the second Temple are preserved to us together with their teachings, and these names were no doubt already mentioned in the collections of Halakot that existed in Temple times. R. Zemah Gaon can only refer to the time before Jose b. Joezer, when, indeed, no individual names were mentioned in connexion with the halakic teachings, the latter being

[33] This responsum is quoted by Epstein in his *Eldad ha-Dani*, pp. 7–8, and more fully in Jellinek's *Beth Hamidrash*, II, pp. 112–13. We shall discuss it in detail later on in the course of this essay. Zemah's statement that Eldad's Talmud followed the custom of old when they taught the Halakah without mentioning the names of individual teachers, finds corroboration in the manner in which the halakic teachings as quoted by Eldad were introduced. According to Eldad all the halakic teachings were introduced with the phrase אמר יהושע מפי משה מפי הגבורה. This phrase, like the phrases יושב ודורש כמשה מפי הגבורה and למדין תורה כמשה רבינו, would well describe the older Midrash-form, in which all teachings were given in the name of Moses, i.e. as interpretations of the very words of Moses.

given as interpretations of the Scripture (שהיו דורשין), that is, in the Midrash-form. It is most probable that Sherira by the term מעיקרא במקדש refers to the same period which Zemah Gaon designates as במקדש, that is, to the time before Jose b. Joezer. We can therefore reasonably conclude that the new form of teaching the Halakah, i.e. Mishnah-form, was first made use of in the closing days of Jose b. Joezer.[34]

We have, now, to ascertain the reason for the introduction of a new form of teaching the Halakah alongside of the older form. Having fixed the time, we must now inquire into the conditions of that time, to see if we cannot find in them the reason for the innovation. An examination of the conditions that obtained during the period under consideration reveals the fact that many great changes had taken place in the life of the Judean community. We notice the presence of various new tendencies. The people's outlook upon life and their regard for the law had considerably changed. Even among the teachers and leaders we find new and divergent attitudes towards the Law of the fathers on the one hand and towards the new ideas and tendencies on the other hand. All these changes were brought about by the one radical change in the political condition of the people, resulting from the passing of Judea from Persian

[34] It is perhaps for this very reason that the teachers until the time of Jose were called אישכולות. This is correctly interpreted by Samuel in the Talmud (Temurah 15b and Soṭah 47b) to mean איש שהכל בו, viz. that each man spoke only the opinion of the whole group and that the group spoke for each man, in the sense that the teachers acted as a body, not as individuals. The report that the Eshkolot ceased with the death of Jose b. Joezer, משמת יוסי בן יועזר בטלו האשכולות, means therefore that this concerted action of the teachers ceased with Jose, and after him they began to mention Halakot in the name of individual teachers.

to Greek rule. This great political change caused the interruption of the activity of the Soferim as an authoritative body of teachers. This interruption of the activity of the Soferim which was coincident with the death of Simon, the last member of that body, in the course of time led to a departure from the methods of the Soferim and necessitated the introduction of a new method of teaching the Halakot, namely, the Mishnah-form. In order to prove this, we must first review the conditions that prevailed in the time of the Soferim and examine the methods of the Midrash used by them.

As said above, the Soferim taught the people only the Book of the Law, ספר התורה, with such interpretations and explanations as they could give to it. Their exegetical rules and Midrash-methods, simple as they were, were nevertheless sufficient for their purpose, which was to give all the halakic teachings in connexion with the written Law. There was no reason whatever to make any change in the form of teaching, and there was absolutely no need to teach anything else besides the Book of the Law and its Midrash. The stream of Jewish life, during the period of the Soferim, moved on smoothly and quietly, without any great changes. Under the Persian rule the Jewish people were merely a religious community, at the head of which stood the high-priest,[35] who was the highest religious authority. The conditions which prevailed in this community during the last days of the Persian rule were almost the same as in the earlier days, when the community was first organized by the exiles

[35] This was the case, at any rate, in the second half of the Persian period. See Wellhausen, *Israelitische und Jüdische Geschichte*, 3rd edition, pp. 198 ff., and Schürer, *Geschichte*, II, 4, pp. 267 ff.

who returned from Babylon. The Book of the Law accepted from Ezra by these early founders and organizers with the few simple interpretations given to it by the Soferim, was therefore sufficient for almost all the needs of the community throughout the entire Persian period. Of course, some slight changes in the conditions of life must have developed in the course of time. These changes in the inner life of the community probably brought new religious customs. The same changes probably required certain modifications in the interpretation of some of the written laws or even the introduction of new laws and new practices. All these necessary modifications and even the few new laws the Soferim could easily read into the written Law by means of interpretation, or even embody the same in the Book by means of some slight indications in the text itself. Thus they found in the Book of the Law all the teachings they required.

The Soferim were able to do this because they were also the actual scribes whose business it was to prepare copies of the Book of the Law. If they desired to teach a certain law, custom, or practice, because they considered it as part of the religious teachings, although it could not be found in, or interpreted into, the Book of the Law, they would cause it to be indicated by some slight change in the text.[36] For instance, by adding or omitting a letter,

[36] As we have received the Torah from the Soferim and only in the textual form in which they cast it (not considering some slight changes and additions that may have been made in the period after the Soferim, see below, note 43), it is impossible now to ascertain the full extent of the changes and corrections made by the Soferim in the original text of the Law. However, there is no doubt that the Soferim did change and correct the text of the Torah which they originally had. A tradition to this effect was current among the Rabbis of the Talmud. The Rabbis often refer to such changes as 'correc-

or by the peculiar spelling of a word they could bring about

tions of the Soferim', תיקון סופרים (Genesis r. LIX, 7 and Exodus r. XIII, 1) or תקנת סופרים (Leviticus r. XI, 5). They enumerated many passages in the Scriptures which in their present form represent the corrected readings introduced by the Soferim (Sifre Numbers, § 84, Friedmann, p. 22 b, and Mekilta, *Beshallaḥ, Shirah*, VI, Weiss, pp. 46 b–47 a). In Tanḥuma, *Beshallaḥ* 15 (on Exod. 15. 7) it is expressly stated that all these corrections were made by the Soferim, the Men of the Great Synagogue, תיקון סופרים אנשי כנסת הגדולה ; also, אלא שבינו פסוקים אלו אנשי כנסת הגדולה ולכך נקראו סופרים. Even if it should be granted that these statements in the Tanḥuma are of later origin (see R. Azariah de Rossi, *Meor Enayim, Imre Binah*, ch. XIX), it cannot be disputed that the interpretation of the term תיקון סופרים as referring to the corrections made by the Soferim, who were identified with the Men of the Great Synagogue, is correct. This is confirmed by the fact that the same corrections, which in the Midrashim are designated as תיקוני סופרים, are designated in the Massorah, *Oklah We-Oklah* (No. 168, ed. Frensdorf, p. 113), as 'corrections made by Ezra' (י"ח מלין תיקן עזרא), who was the first of the Soferim. If this tradition about the תיקוני סופרים conflicts with the later conception of the Rabbis, namely, that the entire Torah is from God, and that the one who maintains that there are some verses in the Torah which were not spoken by God, is a despiser of the word of God (Sanhedrin 99 a), this does not argue against the correctness of this tradition, as R. Azariah de Rossi (*l. c.*) assumes. On the contrary, this conflict speaks in favour of our tradition. For it proves that the tradition about the תיקוני סופרים was too well-known a fact to be suppressed by later dogmatic views. All that the later teachers could do was not to deny the fact that changes were made in the text but merely to avoid too frequent mention of it. When forced to mention the fact they pointed to a few harmless changes and omitted (as in Sifre and Mekilta) the direct reference to the Soferim as the authors of these corrections (compare Weiss, *Middot Soferim*, to Mekilta, p. 46 b). It was probably on account of such considerations that the reference to the Soferim, the Men of the Great Synagogue, was omitted from the passage in Tanḥuma, in those old copies which R. Azariah de Rossi (*l. c.*) reports to have seen. The statement in the Tanḥuma expressly ascribing the corrections to the Soferim, the Men of the Great Synagogue, is accordingly not of later origin, as R. Azariah assumes. The omission of this reference from certain copies was due to a later hand.

Although the corrected passages pointed out by the Rabbis do not deal with the Law, we may safely assume (notwithstanding Weiss, *l. c.*) that the Soferim corrected even the legal portions of the Pentateuch. A correction of the Ketib לא into the Ḳere לו (Levit. 11. 21) certainly affected the Law.

the desired result.[37] They did not hesitate to do so, because they did not in any way change the law as they understood it. The changes and corrections which they allowed themselves to make in the text were of such a nature that they did not affect the meaning of the passage, but merely gave to it an additional meaning, thus suggesting the law or custom which they desired to teach. In this manner they succeeded in grafting upon the written Law all these newly developed laws and customs which they considered genuinely Jewish. Even if the Soferim had desired to introduce a new religious practice or to teach a new law which could not be represented as an interpretation of the Law nor indicated in the text, they would not have been compelled to change their usual form of teaching. They could still have taught that law or custom together with the passage of the written Law with which it had some distant connexion, offering it as an additional law or a modification of the practice commanded in the written Torah. Thus, throughout the entire period of their activity the Soferim who, no doubt, formed some kind of an authoritative organization with the high-priest as its head, remained true to their name, and continued to teach only the Book of the Law with its interpretation—Midrash—and nothing else.

That the activity of the Soferim as an authoritative

This change, like most of the Ḳere and Ketib, originated with the Soferim, according to the talmudic tradition (Nedarim 37 b). The later teachers, for obvious reasons, would not mention the corrections made by the Soferim in the legal parts of the Pentateuch, as it would have cast unfavourable reflections on the authority of the Law and the validity of the Halakah.

[37] For illustrations of this method of the earliest Midrash to indicate Halakot in the text itself, see the writer's article 'Midrash Halakah' in the *Jewish Encyclopedia*, VIII, pp. 579 ff.

body of teachers ceased with the death of their last member, Simon the Just I (about 270 B.C.) has already been shown. It was the change from the Persian to the Greek rule that caused the interruption of the activity and ended the period of the Soferim. The change in the government brought about many other changes in the conditions of life and in the political status of the people. These, in turn, influenced the religious life and the communal institutions, and had their effect also upon the activity and authority of the teachers. All these changes in the inner life of the community did not come to pass immediately after the people came under Greek rule, for a people cannot be quickly transformed by mere external influences. It was through a long process, lasting about half a century, that these changes were gradually effected. During the lifetime of Simon the Just, the new influences had not yet overthrown the authority and the leadership of the Soferim as an organized body of teachers. Simon who enjoyed the high respect of the people could maintain the old order even under the changed conditions by the very influence of his great personality. Being the high-priest and the respected leader of the people, he still preserved the authority of the teachers, and under his leadership they continued some of their usual activities. But with the death of Simon all the influences of the new order of things made themselves felt. The activity of the teachers as an authoritative body ceased. Even the authority of the High-priest was undermined. He was no more the highest authority of a religious community and its chief representative. Other people assumed authority over the community. Laymen arose who had as much influence among the people and with the government as the High-priest, and they became leaders.

The people who had now been in contact with Greek culture for half a century, acquired new ideas and became familiar with new views of life, other than those which they had been taught by their teachers in the name of the law of their fathers. The rich and influential classes accepted Greek ideas and followed Greek customs. The leaders of the people were no longer guided by the laws of the fathers, nor was the life of the people any longer controlled solely by the laws and customs of the fathers as contained in the Torah. The teachers were no longer consulted upon all matters of life, as they had been in former days, when, with the High-priest at the head of the community, they formed an authoritative body. Consequently, the interpretation and the development of the laws of the fathers did not keep pace with the rapid changes and developments in the actual conditions of life. The changed conditions of the time brought forth new questions for which no decisions were provided in the laws of the fathers, and no answers could be found even in the interpretations and traditions of the Soferim, because such questions had never before arisen. These questions were decided by the ruling authorities who were not teachers of the Law, and in some cases probably by the people themselves. These decisions, presumably, were not always in accordance with the principles followed by the teachers of the Law. The decisions in new cases, given by ruling authorities, and answers to new questions, fixed by popular usage, became in the course of a few decades the established practices of the people. This development ensued because the people could not distinguish between decisions derived from the Law by interpretation, and decisions given by some ruling authority, but not based upon any law or

tradition of the fathers. Neither could the majority of the people distinguish between generally accepted customs that had been recently introduced, and such as had been handed down by the fathers. To the people at large who were not concerned about historical and archaeological questions, both were alike religious customs sanctioned by popular usage.

Thus many new customs and practices for which there were no precedents in the traditions of the fathers and not the slightest indication in the Book of the Law, were observed by the people and considered by them as a part of their religious laws and practices. No attempt was made to secure the sanction of the authority of the Law for these new practices in order to harmonize the laws of the fathers with the life of the times. The few teachers (disciples of the Soferim) were the only ones who could perhaps have brought about this harmonization. By means of interpretation they might have found in the Book of the Law some support for the new practices, and they might have grafted the new and perhaps foreign customs upon the old, traditional laws of the fathers. But these teachers had no official authority; they were altogether disregarded by the leaders and ignored by a large part of the people.

The fact that there was no official activity of the teachers, in the years following the death of Simon the Just, is borne out even by the alleged traditional report given in Abot I. The Mishnah, despite its anxiety to represent a continuous chain of tradition and to maintain that the activity of the teachers had never been interrupted, yet finds itself unable to fill the gap between Simon the

Just I and Antigonos.[38] It does not mention the name of even one teacher between the years 270 and 190 B.C., that is, between the latest possible date of Simon's death and the time of Antigonos. Evidently tradition did not know of any teacher during that period. This would have been impossible if there had been any official activity of the teachers in those years.

[38] It is impossible to bridge over the gap in the succession of teachers as given in the Mishnah. It is evident that Antigonos could not have been the successor of Simon the Just I, and the immediate predecessor of the two Joses. Halevi's arguments (*Dorot Harishonim*, I, ch. xii, pp. 198 ff.) are not convincing. The Mishnah speaks of the two Joses as contemporaries. As such they are also referred to Shabbat 15 a. We cannot for the purpose of upholding the other tradition, namely, that there was an uninterrupted chain of teachers, deny this explicit report and make of Jose b. Joḥanan a colleague of Antigonos and a man older by a full generation than Jose b. Joezer. If Antigonos had been the pupil and successor of Simon the Just I, as Halevi (*l. c.*) assumes, he could not have been succeeded directly by the two Joses. We would then have a gap between 250 B. C., the date when Antigonos the pupil of Simon the Just I must have died, and 180 B. C., the time when the two Joses must have begun their activity. In spite of all the pilpulistic arguments of Halevi against Frankel, it is evident that the latter is right in assuming that Antigonos did not directly succeed Simon the Just I (*Hodegetica*, p. 31). If we still desire to consider the report in the Mishnah as correct, we must interpret it to mean that Antigonos succeeded Simon the Just II (see Weiss, *Dor*, I, p. 95) and not the last member of the Great Synagogue who was Simon the first (against Krochmal, *More Nebuche Hazeman*, pp. 52 and 174). Indeed, the wording in the Mishnah seems to indicate this. For if the Mishnah meant to say that Antigonos succeeded that Simon the Just who is mentioned in the preceding paragraph of the Mishnah and designated as the last member of the Great Synagogue, it would have said קיבל ממנו, as it uses in the following passages the phrase קיבלו מהם. The specific mention of the name in the statement קיבל משמעון הצדיק evidently shows that it was another Simon who is here referred to as the one who preceded Antigonos. This can only be Simon the Just II. At any rate, it is certain that after Simon I there came a time when there was no official activity of the teachers. Even the later tendency to reconstruct the chain of tradition, such as we have in the report in the Mishnah Abot, could not succeed in finding the name of a single teacher who flourished in the period between Simon I and Simon II (see p. 116).

Even in those days, there were without doubt some teachers who preserved the traditional teachings of the Law. There were some people who remained faithful to the laws and the traditions of the fathers, and among them some who studied the Law in the manner in which it had been taught by the Soferim. However, these teachers had no official authority. It was merely in a private capacity that they delivered their teachings to those who wished to follow them. However, absence of official authority not only did not prevent but even helped the activities of the teachers to become of great consequence for future developments. It brought about two great results which later became the most important factors in developing the Halakah and in shaping the Jewish life. In the first place, it brought about the popularization of the study of the Law and paved the way for the rise of teachers not of the priestly families. In the second place, it preserved the text of the Book of the Law in a fixed form, which resulted in giving this text a sacred, unchangeable character.

In the days of the Soferim, when the High-priest was the head of the community, and when the teachers under his leadership formed an official body vested with authority to arrange all religious matters in accordance with the Law as they understood it, the knowledge of the Law was limited to the priests who were the only official teachers.[39]

[39] The Soferim, up to the time of the death of Simon the Just I, were mostly, if not exclusively, priests. See my *Sadducees and Pharisees*, p. 6. Compare also Schürer, *Geschichte*, II[4], pp. 278–9, 373–4, and 455, and R. Smend, *Die Weisheit des Jesus Sirach* (Berlin, 1906), p. 346. Smend, however, goes too far in assuming that even as late as the beginning of the second century B. C. all the teachers of the Law were priests. This is not correct. In the middle of the third century B. C., after the death of Simon

On the one hand, the priests who were in possession of the law and tradition of the fathers considered the teaching and interpreting of the religious law as their priestly prerogative. They would therefore not impart to the lay people a thorough knowledge of the Law so that they too could become teachers.[40] This would have resulted in curtailing their own special privileges, a sacrifice which priests are not always willing to make. On the other hand, the people had no impetus to study the Law because they could rely on the authority of their official teachers in all matters religious. They were satisfied that 'the lips of the priest should keep knowledge and that they should seek the Law at his mouth', and get from him decisions concerning all the questions of life. But when the authority of the High-priest as the ruler of the community was gone, and the priestly teachers also lost their official authority, the study of the Law was no longer the activity of an exclusive class of official teachers. A knowledge

the Just I, there were already many lay teachers. In the beginning of the second century B.C. they already possessed great influence and were members of the Gerousia. The description of the Soferim as sitting in the senate and knowing the Law, which is given in Sirach 38, refers to both lay- and priest-teachers.

[40] The saying 'Raise many disciples', which is ascribed by the Mishnah (Abot I) to the Men of the Great Synagogue, does not argue against this statement. It can be interpreted to mean either to raise many disciples among the priests who should carry on the activity of teaching, or to educate many pupils in a knowledge of the religious law, but not to make them authoritative teachers. However, it is very probable that the later teachers ascribed to the early Soferim a motto which they thought the Soferim should have promulgated. As the fact of their being priest-Soferim was forgotten, the later teachers ascribed to them their own democratic tendencies. These tendencies were against the monopolization of the knowledge by the priests, and in favour of spreading the knowledge of the Law among the people at large.

of the Law and the traditions of the fathers no longer gave its possessor the prerogative of sharing in the administration of the community. At the head of the community now stood political leaders who arranged communal affairs according to standards of their own.

The study of the Law now became a matter of private piety, and as such it was not limited to the priests. On the one hand, the priests no longer had any interest in keeping the knowledge of the Law jealously to themselves, as it did not bring them any special privileges. For such influence as the priests still had was theirs, not because they knew or taught the Law, but because they were the priests, in charge of the Temple, and members of the influential aristocratic families.[41] They therefore had no hesitancy in imparting a knowledge of the Law to the lay people. It must be kept in mind that there were at all times some true and faithful priests to whom their religion was dearer than personal advantages and family aggrandizement. These priests were now very eager to spread religious knowledge among the people. On the other hand, the lay people were now more eager than formerly to acquire such knowledge. Since there was no official body of teachers to decide authoritatively all religious matters, the pious man who cared for the Law had to be his own religious authority. He therefore sought to acquire a correct knowledge of the laws and the traditions of the fathers. This resulted in the gradual spread of a knowledge of the Law among the pious laymen, and in the rise of lay teachers who had as much knowledge of the Law as the priestly teachers themselves. These new teachers soon claimed for themselves the

[41] See below, note 50.

religious authority which was formerly the prerogative of the priests.

For about half a century, during the ascendancy of the power of the political leaders, these teachers, laymen, and priests had no recognized authority. They were not consulted as to the regulation of the communal affairs, and not called upon to answer questions resulting from the changed conditions of life. They therefore contented themselves with merely preserving the Law and the traditions that were left to them from the past, without trying to develop them further or add to them new teachings of their own. Accordingly, they continued to teach the text of the Book of the Law with the interpretations given to it by the Soferim and the Halakot, which the latter indicated in or connected with the text of the Law. They did not forget any of the interpretations or teachings of the Soferim.[42] Thus they preserved the text of the Law in the exact form in which it was handed down to them by the Soferim, with all of its peculiarities, as well as all the changes and indications made in it by the Soferim. They neither changed the text nor inserted indications of new laws therein. And after the text was for many years in a certain form, that became the fixed and permanent form. In the course of a few decades that permanent form with all its peculiarities came to be considered as sacred, so that no one afterwards dared to

[42] I must emphasize this point in opposition to Oppenheim who assumes that in the time of persecution they forgot the teachings of the Soferim and for this reason began to teach independent Halakot. The troublesome times might have hindered original activity and the development of the teachings, but could not have prevented the preservation of the older teachings. If they did study at all, they studied what was left to them from the Soferim.

introduce textual changes, as the Soferim of old used to do,[43] for the purpose of indicating new laws or new meanings to old laws. Thus we see that after the death of Simon the Just I, the conditions in the community and as a result thereof the activities of the teachers differed greatly from those that were obtained in the times of the Soferim. There prevailed a state of religious anarchy, wherein the practical life of the people was not controlled by the law of the fathers as interpreted by the religious authorities, nor were the activities of the teachers carried on in an official way by an authoritative body. This chaotic state of affairs lasted for a period of about eighty years, until another great change took place which brought the religious anarchy to an end. This happened about the year 190 B.C., when an authoritative Council of priests and laymen was again established. This new Council or Sanhedrin assumed religious authority to teach and interpret the Law and proceeded to regulate the life of the community according to the religion of the fathers.

According to a report in Josephus (*Antiquities*, XII, 3, 8), Antiochus III manifested a very friendly attitude towards the people of Judea after that province had come under his rule. Following his victory over the Egyptian king at the battle of Panea (198 B.C.), he is said to have addressed to his general Ptolemaeus an epistle in favour of the Jews. In this letter, reproduced by Josephus, the following para-

[43] We are not considering here the slight changes which according to Geiger (*Urschrift*, pp. 170 f.) were made as late as the time of R. Akiba and according to Pineles (*Darkah shel Torah*, p. 96) even as late as the time of Judah ha-Nasi I. As a whole the text was fixed. Possibly, the Pharisaic teachers, as the party grew in influence and as they became the sole authorities of the religious law, ventured again to make slight changes and to indicate their teachings in the text.

graph occurs (§ 142): 'And let all of that nation live according to the laws of their own country and let the senate (γερουσία) and the priests and the scribes of the Temple and the sacred singers be discharged from poll money and the crown tax and other taxes also.' We learn from this that the Jews under Antiochus III were to live according to their own laws, and that there was, besides the priests, another authoritative body, a senate or a Gerousia, of which laymen were also members. Otherwise the mention of the *senate and the priests* separately would have no sense.[44]

It is true that some details in the epistle prove the authorship of Antiochus to be spurious. It was evidently not written by Antiochus. It originated at a much later date and was only incorrectly ascribed to Antiochus by some Hellenistic writer whom Josephus followed (see Büchler, *Die Tobiaden und Oniaden*, pp. 158 seq.). However, if the conditions in the Jewish community under Antiochus III had been known to be very different from those described in this epistle, neither Josephus nor his authority would have accepted the authorship of Antiochus.

[44] Büchler (*op. cit.*, p. 171) notices this strange feature in the epistle, namely, that the Gerousia is mentioned separately from the priests. He explains it by assuming that the epistle was originally written by a man who lived outside of Palestine and who did not know that in Palestine the senate was composed of priests. While this may explain why the author of the original epistle could have made the mistake, it does not explain how Josephus who was a Palestinian or the Palestinian authority that he followed could have accepted this epistle as genuine. One or the other certainly would have noticed that it did not represent actual conditions. This difficulty is removed by assuming that Josephus knew that at the time of Antiochus the Great the senate in Judea was formed not exclusively of the priests but also of laymen. He, therefore, did not find it strange that the epistle should mention the senate and the priests, i. e. the senate as a body not identical with the priests.

Evidently Josephus on his part had no reason to doubt the genuineness of this epistle, and in his opinion it could well have originated from Antiochus. This can only be explained by assuming that Josephus knew from other sources that, after Judaea had come under Syrian rule, there was a revival of the religious life in the community and a renewal of the official activity of the teachers. From the same source he must have known that the people tried again to live according to their laws and that there was at the head of the community an authoritative body, a Senate or a Gerousia, of which lay teachers also were members. As these events took place under the rule of Antiochus, Josephus linked them in his mind with the political conditions under the same king and believed they were the direct results of Antiochus's friendly attitude towards the Jews. In this supposition Josephus was perhaps right. It is quite probable that the change in the government brought about the change in the internal affairs of the community. As it weakened the influence of the former political leaders, it made it possible for that new organization composed of priests and lay members to assume the leadership of the community. And when Josephus found an epistle, ascribed to Antiochus, which permitted the Jews to live according to their own laws and actually spoke of a senate besides the priests, he could well believe it to have been written by Antiochus.

In a source older than Josephus we indeed find a report of the renewed religious activity by an authoritative assembly composed of priests and lay teachers in the first two decades of the second century B.C. I refer to the 'Fragments of a Zadokite Work', published by Schechter (*Documents of Jewish Sectaries*, vol. I, Cambridge, 1910).

There it is stated (Text A, p. 1) that 390 years after God had delivered them (the Jewish people) into the hands of Nebuchadnezzar, the King of Babylon (about 196 B.C., i.e. 390 years after 586 B.C.), God made to grow a plant (i.e. an assembly) of Priests and Israelites. They (the members of that assembly) meditated over their sin and they knew that they had been guilty [of neglecting the religious laws]. They sought to find the right way [to lead the people back to the Law of God].[45] Again on page 6 the same fact is stated even more clearly. There it is said that 'God took men of understanding from Aaron (i.e. from among the priests) and from Israel wise teachers (i.e. non-priestly

[45] The passage in the text A, p. 1, lines 5 ff., reads as follows:—
ובקץ חרון שנים שלש מאות ותשעים לתיתו אותם ביד נבוכדנאצר מלך בבל פָּקַד ויצמח מישראל ומאהרן שורש מטעת לירוש את ארצו ולדשן בטוב אדמתו ויבינו בעונם וידעו כי אנשים אשמים הם ויהיו כעורים וכימגששים דרך שנים עשרים ויבן אֵל אל מעשיהם כי בלב שלם דרשוהו ויקם להם מורה דרך להדריכם בדרך לבו (וגומר). 'And at the end of the wrath, three hundred and ninety years after He had delivered them into the hand of Nebuchadnezzar, king of Babylon, He remembered them and made bud from Israel and Aaron a root of a plant to inherit His land and to rejoice in the good of His earth. And they meditated over their sin and they knew that they were guilty men and they were like the blind groping in the way twenty years. And God considered their deeds, for they sought Him with a perfect heart, and He raised for them a teacher of righteousness to make them walk in the way of His heart' (Translation, as given by Schechter). It is evident that the author in describing the origin of the Zadokite sect reviews the conditions that prevailed in Judea prior to the formation of this sect. The period of 'wrath' or, as the parallel passage (p. 5) has it, 'the desolation of the land', is the time of the wars between Syria and Egypt before Antiochus the Great finally acquired Palestine. It was after this period had come to an end, about three hundred and ninety years after God had given the people into the hand of Nebuchadnezzar (about 196 B.C., 390 after 586) that God raised up a plant from *Israel* and *Aaron*. 'Plant' here is a designation for an assembly or Sanhedrin (comp. Genesis r., LIV, 6, ויטע אשל אישל זה סנהדרין, and Ḥullin 92 a, והיא כפורחת עלתה נצה אלו סנהדרין).

Israelitic teachers) and caused them to come together as an assembly (וַיְשַׁמְּעֵם). They dug the well . . . , that is the Torah'.[46] This means that the assembled priests and lay teachers together searched the Law of the fathers to find in it a way of prescribing for the religious needs of their time.

The same tradition pertaining to the renewed activity of the teachers and the existence of a Sanhedrin composed of priests and lay teachers in the time of Antiochus, is also found underlying a report in the Mishnah. According to this report, the head of the Sanhedrin at that time was Antigonos of Soko, a lay teacher, and succeeding him were Jose ben Joezer of Zeredah and Jose ben Johanan of Jerusalem (Abot I, 3–4). Of the latter two, Jose ben Joezer, a pious priest, is said to have been the president and Jose ben

We learn from this report that in that assembly or the reorganized Sanhedrin, where the nucleus was formed for the two parties, Sadducees and Pharisees, there also arose a third party or sect, composed both of priests and Israelites who differed from the two other groups, the Priest-Sadducees and the Israelite-Pharisees. This third group acknowledged the rights of the lay people to be like the priests, but would otherwise not follow the tendencies of these lay teachers who formed the nucleus of the Pharisaic party. This third group formed a special sect under a teacher of righteousness and emigrated to Damascus.

We further learn from this report that for about twenty years there was harmony between the various elements in this new assembly and that they tried to find a way of arranging the life of the community in accordance with the Law of God, as handed down to them from their fathers.

[46] The passage on p. 6, line 2–3, reads as follows: ויקח מאהרן נבונים ומיישראל חכמים וַיְשַׁמְּעֵם. The phrase ומיישראל חכמים reminds one of the term חכמי ישראל 'Lay teachers of Israelitic descent', which later on was the designation of the Pharisees, because these lay teachers in the reorganized Sanhedrin formed the nucleus of the Pharisaic party. See my *Sadducees and Pharisees*, in *Studies in Jewish Literature issued in honour of Dr. K. Kohler*, pp. 116 ff. The phrase וַיְשַׁמְּעֵם means 'he assembled them', like וישמע שאול את העם, 1 Sam. 15. 4.

Johanan, a lay teacher, the vice-president of the Sanhedrin Ḥagigah II, 2). Of course, these reports in the Mishnah, in the form in which we have them, are of a comparatively late date and cannot be considered as historical.[47] They form part of that artificial reconstruction of history, undertaken by the later teachers who aimed to establish the fiction of a continuous chain of tradition and the alleged uninterrupted leadership of the Pharisaic teachers through-

[47] It is very unlikely that Jose b. Joezer was president (נשיא) of the Sanhedrin although he belonged to an influential aristocratic family and was a priest (חסיד יבכהונה, Ḥagigah III, 2). He and his colleague Jose b. Johanan probably were the leaders of that group of pious lay teachers in the Sanhedrin, the Ḥasidim, who were the forerunners of the Pharisees. This may be concluded from the report in 1 Macc. 7. 12–16, where we read as follows: 'Then did assemble unto Alcimus and Bacchides a company of Scribes to require justice. Now the Asideans (Ḥasidim) were the first among the children of Israel (i. e. non-priests) that sought peace of them.' These Ḥasidim who are here identified with the Scribes are also designated as mighty men of Israel (i. e. non-priests), even all such as were voluntarily devoted unto the Law (*ibid.*, 2. 42). We learn from these references that, prior to the Maccabean uprising, there were already scribes who were not priests, that is, lay-teachers of Israelitic descent, who were mighty and influential in the community, otherwise they could not have assumed the authority to go to Alcimus to negotiate for peace. They evidently were of the same group of lay teachers in that reorganized Sanhedrin, who were the forerunners of the Pharisees. They were distinct from the other members of the Sanhedrin in that they were merely concerned with the religious liberty and were therefore willing to recognize Alcimus if they could obtain from him peace and religious freedom. Jose b. Joezer was among this group, and probably was their leader (see above, note 29). In the mind of the later Pharisaic teachers it was this group of the Ḥasidim in the Sanhedrin which was looked upon and considered as the Sanhedrin. Its leaders were considered as the real leaders of the whole Sanhedrin. Thus originated the tradition about the Zuggot as the heads of the Sanhedrin. For later tradition considers only those teachers who were of the Pharisees as legitimate members of the Sanhedrin, and the Sadducees who constituted the majority of the members and were the actual leaders of the Sanhedrin are regarded as intruders and usurpers.

out all the past history. Unhistorical as these reports may be, they certainly contain some kernel of truth. This truth consisted in the fact, known to them, that there was some authoritative assembly composed of priests and lay teachers, of which these men, Antigonos and the two Joses, were prominent members. This historical report, the later teachers elaborated to fit into their scheme. They ignored all the other members, probably even the real leaders of that Sanhedrin, and represented those teachers as the real leaders who were pious followers of the traditional law and who were so to speak the fathers of the Pharisaic party. However, whether Antigonos and Jose were really the heads of the Sanhedrin as tradition represents them, or merely prominent members, or perhaps merely the leaders of the more pious group in that Sanhedrin, the Ḥasidim, this much is sure: there was at that time an assembly or a Sanhedrin, composed of priests and lay teachers with official authority to arrange the religious affairs of the people. The members of this Sanhedrin took up the interrupted activity of the former teachers, the Soferim, and, like them, sought to teach and interpret the Law and to regulate the life of the people in accordance with the laws and traditions of the fathers. But in their attempt to harmonize the laws of the fathers with the life of their own times, they encountered some great difficulties.

It is true, the teachers who were now members of the authoritative council or Sanhedrin, were in the possession of the Book of the Law, in the exact form in which it was transmitted to them by the Soferim. They also knew all the interpretation of the Soferim, as well as all the traditional teachings and additional laws which the latter

connected with or based on the written laws of the Pentateuch. But all the laws contained or indicated in the text of the Book together with all the traditional teachings given by the Soferim in connexion with the Book of the Law were not sufficient to meet the requirements of the new situation. These laws did not provide answers for all the questions that arose, and could not furnish solutions for the new problems in the life of the people. For, all these new problems and questions were the result of new conditions of life now prevailing in Judea, conditions utterly different from those in the times of the Soferim. The problem then became, how to find in the old laws new rules and decisions for the questions and unprecedented cases that now arose.

This difficulty was aggravated by the fact that during the seventy or eighty years of religious anarchy, many new practices had been gradually adopted by the people. In the course of time, these came to be considered as Jewish religious practices, and no distinction was made between them and older religious practices contained in the teachings of the Soferim and based on the traditions of the fathers. Again, the outlook of the people had broadened and their religious concepts had become somewhat modified during those years. Many an old law assumed a new and different meaning or was given a new application, not by the decree of an authoritative body of teachers, but by the general opinion of the people who had outgrown the older conception of that law. Many questions were decided during those years by the people themselves or by such rulers and leaders as they had. Such decisions, though not given by any religious authority and not derived from the written law, became, nevertheless, recognized rules and principles, re-

spected by the people as much as their other laws written or indicated in the Book. It was such new decisions and popular modifications of some laws, as well as the generally observed new customs and practices, that constituted a large part of the traditional laws and practices. These traditional laws naturally had no indication in the written Law and no basis in the teachings of the Soferim, because they developed after the period of the Soferim.

The reorganized Sanhedrin (after 190) had to reckon with these new laws and customs, now considered as *traditional* because observed and practised by the people for a generation or more. They had to recognize them as part of the religious life of the people. But in order to be able to accept and teach them officially as part of the religious Law, the members of the Sanhedrin had to find some authority for these new laws and customs. They had either to find for them some basis in the traditions and teachings of the Soferim, or to find proof for them by some new interpretation of the written Law. This, however, was not an easy task to perform. The present teachers, although members of an official body, like the Soferim of old, could not, like these Soferim, indicate new laws in the text by means of slight changes or additional signs, because the pliability of the text was gone. The text was now in a fixed form which was considered sacred, and no changes could be made in it. The simple methods of interpretation used by the Soferim were also inadequate for the needs of the present teachers. These simple methods could not furnish enough interpretations on which to base the new decisions needed for the times. Throughout the period of the Soferim the development of the interpretations of the Law kept pace with the development of the conditions of

life. But for the teachers of the reorganized Sanhedrin, these simple methods were insufficient because their development had been arrested for about eighty years. We have seen above that the development in the conditions of life after the Soferim, took place without a corresponding development in the teachings and interpretations of the Law. Labouring under such disadvantages the new Sanhedrin found it very difficult to solve the problem of harmonizing the Law of the fathers with the life of the people.

Having no reports concerning that time, we cannot trace the activity of the new Sanhedrin from its beginnings. We know only that it was organized after Judea had come under Syrian rule, that is, after 196 B.C. Some years must have passed before the above-mentioned difficulties were fully realized and plans proposed for their solution. It was probably not until the time of Antiochus Epiphanes that such definite plans were considered.[48] Different solu-

[48] From the report in the Zadokite Fragment we learn that for twenty years there was harmony among the various elements of that reorganized Sanhedrin and all sought God with a perfect heart and endeavoured to order their lives in accordance with His Law (see above, note 44). This means that before the year 175 B.C., that is, twenty years after 196 B.C., the date of the organization of that new Sanhedrin, the differences of opinion did not lead to an outspoken opposition between the different groups within that Sanhedrin. It was only after the year 175 B.C., that is, under the reign of Antiochus Epiphanes, that these differences of opinion became so marked as to characterize the different groups in that Sanhedrin as distinct from one another. This is also stated in the Assumptio Mosis 6. 2 where we read as follows: 'And when the time of chastisement draws nigh and vengeance arises through the kings who share in their guilt and punish them, they themselves also shall be divided as to the truth.' This refers to the time before the Maccabean revolt, and the king through whom they will be punished can only refer to Antiochus Epiphanes. We are accordingly told that in the time of Antiochus Epiphanes, after the year 175 B.C., there was a division among the Jews themselves in regard to

tions were offered by the various members of the Sanhedrin. This difference of opinion in regard to the solution of this problem caused a breach in that Sanhedrin which ultimately resulted in a division into parties, namely, Pharisees and Sadducees. This breach in the unanimity of opinion was effected during the time of Jose ben Joezer and Jose ben Johanan, the successors of Antigonos, and this is possibly the historic fact upon which is based the tradition that ascribes the origin of the two parties, Pharisees and Sadducees to this particular time.[49]

The priestly group in that assembly, whose exclusive privilege it had formerly been to give instruction in religious matters, and who even now participated prominently in the

the truth, that is, as regards their religious laws. The two groups mentioned there are those who later on formed the two parties, Sadducees and Pharisees. Compare also the Book of Enoch 90. 6, where these two groups, the nucleus of the two parties, are referred to as appearing first at that time. This also agrees with the report in 2 Maccabees, that in the days of Onias III, before Antiochus Epiphanes, the laws were kept very strictly owing to the goodliness of Onias (3. 1) who was a zealot for the Law (4. 2).

[49] The legendary story in Abot d. R. Nathan (version A, ch. V, version B, ch. X, Schechter, p. 26) contains a kernel of truth in that it dates back the origin of the conflict between the two parties to the time of the pupils of Antigonos. All that the story really tells us is that among the disciples or successors of Antigonos there were already great differences of opinion which divided them into two groups. Only one must keep in mind that the first disagreement was not yet a real division. The complete separation of the two groups and their formation into two distinct parties took place later on in the time of John Hyrcanus (see my *Sadducees and Pharisees*, p. 8, note 2). This seems also to be indicated in the story of Abot d. R. Nathan, where the statement הלכו ופירשו להן 'they separated' refers to the pupils of the successors of Antigonos. This would refer to the time of Joshua b. Perahiah, the successor of Jose b. Joezer, who was the pupil of Antigonos. This explanation will answer the objections raised by Halevi (*Doroth Harishonim*, I c, VIII, 169 ff.) against putting the date of the origin of the Sadducean party at the time of the pupils of Antigonos.

administration of the communal and religious affairs,[50] had a simple solution for the problem in conformity with the maintenance of their authority. In their opinion, the main thing was to observe the laws of the fathers as contained in the Book of the Law, because the people had pledged themselves, by oath, in the time of Ezra, to do so. If changed conditions required additional laws and new regulations, the priests and rulers were competent to decree them according to authority given to them in Deut. 17. 8–13. They maintained that the priestly rulers of former generations had always exercised this authority. For this reason they did not deem it necessary that all the new laws and regulations needed for the changed conditions of life should be found indicated in the Book of the Law or based on the teachings of former generations. Thus the priestly members of that assembly, the future Sadducees, did not feel the need of developing the old laws, or of forcing interpretations into the written Law. They declared the written Law with all the traditional interpretations of the Soferim absolutely binding. However, as rulers of the people, they claimed the right to decide by virtue of their own authority those new questions for which the laws of the fathers did not provide.

This apparently simple solution offered by the priestly group in the Sanhedrin did not find favour with the lay

[50] Even during the period, when the priests did not carry on any official activity as authoritative teachers, they were still not without influence and authority. Their families still possessed political power, and some of them were influential leaders. In the Temple they had an undisputed authority (see Schürer, *Geschichte*, 114, pp. 279–80). As priests and leaders they had thus become accustomed to exercise authority independently of the Law. Their influence in the last few decades was not due to their being teachers of the Law but to the fact that they formed an influential aristocracy and had control over the Temple and its service.

members of that body. These lay members who had never had a share in ruling the people, now, because of their knowledge of the Law, claimed equal authority with the priests. They refused to recognize the authority of the priests as a class, and, inasmuch as many of the priests had proven unfaithful guardians of the Law, they would not entrust to them the regulation of the religious life of the people. In the opinion of these democratic lay teachers, an opinion also shared by some pious priests, the right to decide religious questions given in Deut. 17. 9 ff. to the priests was not given to them as a family privilege merely because they were priests, but because they were teachers of the Law, and only as long as they were teachers of the Law. The same right was equally granted to the teachers of the Law who were not priests. Both priests and lay teachers had no other authority except that of speaking in the name of the Law. They had merely the right of interpreting the Law and of deciding questions according to their understanding of the Law. They had absolutely no authority to issue new laws or decide religious questions according to principles other than those laid down in the Law, for the Law alone was to be the authority of the Jewish people. The entire life of the people in all its possible situations should be guided and controlled by no other authority than the Law as interpreted by the teachers, whether priest or layman.[51]

Acknowledging the Law of the fathers to be the sole authority, these lay teachers now had to find all the decisions and rules necessary for the practical life of their time contained or implied in the Law. They also had to

[51] For further details about the attitude of each group towards the Law see my *Sadducees and Pharisees*.

devise methods for connecting with the Law all those new decisions and customs which were now universally observed by the people, thus making them appear as part of the laws of the fathers.

There were two methods by which they could accomplish this result. The one was to expand the *Midrash* of the Soferim, that is to develop the method of interpretation used by the Soferim and to invent new exegetical rules, by means of which they could derive new decisions from the written Law, and find sanction therein for various accepted practices. The other method was to enlarge the definition of the term 'Law of the Fathers', so as to mean more than merely the written Book of the Law with all its possible interpretations. In other words, it meant a declaration of the belief that not all the laws of the fathers were handed down in the written words of the Book, but that some religious laws of the fathers were transmitted orally, independently of any connexion with the Book. Either method, to an extent, meant a departure from the old, traditional point of view, a course which the teachers naturally hesitated to take. In spite of considerable reluctance, the teachers gradually were led to make use of both of these methods. At first they attempted to expand the Midrash, the form which they were accustomed to use. They developed new methods of interpretation by which they could derive from the Law new decisions for current cases and even justify some of the existing practices and find scriptural support for some decisions which had originally been given without reference to the written Law. However, the enlarged use of new and more developed Midrash methods was not sufficient to secure proofs for all necessary decisions and find scriptural authority for all existing laws and accepted practices.

There were many practices, generally accepted by the people as part of their religious life, for which even the developed Midrash with its new rules could find no support or proof in the written Law. This was especially the case with such decisions and practices as originated in the time after the Soferim. In the opinion of the teachers, the origin of these laws and customs was Jewish. They reasoned thus: It is hardly possible that foreign customs and non-Jewish laws should have met with such universal acceptance. The total absence of objection on the part of the people to such customs vouched for their Jewish origin, in the opinion of the teachers. Accordingly, the teachers themselves came to believe that such generally recognized laws and practices must have been old traditional laws and practices accepted by the fathers and transmitted to following generations in addition to the written Law. Such a belief would naturally free the teachers from the necessity of finding scriptural proof for all the new practices. They could teach them as traditional Halakot not dependent upon the written Law, that is to say—in the Mishnah-form.

However, the theory of an authoritative traditional law (which might be taught independently of the Scriptures) was altogether too new to be unhesitatingly accepted. Although it may be safely assumed that the fathers of the Pharisaic party did not originally formulate the theory of an oral law in the same terms and with the same boldness with which it was proclaimed by the later Pharisaic teachers, still even in its original form the theory was too startling and novel to be unconditionally accepted. Even those teachers who later became the advocates of the so-called oral law could not at first become easily reconciled to the idea that some laws had been handed down by tradition,

side by side with the written law and equal in authority to the latter. Accordingly, these teachers applied the term 'Traditional Law' only to such practices and rules, whose religious authority was unquestioned and whose universal acceptance went back to the time before the memory of living men.[52] The absence of objection to any such law or custom pointed in itself to an old Jewish tradition as its source, so that the teachers were justified in believing it to be a genuinely traditional law. But even in the case of such generally accepted rules and practices, it was only as a last resort that the teachers would present them independently as traditional laws. They preferred to resort to the developed methods of interpretation, which, although also new and also a departure from the older Midrash, were yet not so startling as the idea of declaring a new source of authority for religious laws in addition to the written Torah. Wherever there was the remotest possibility of doing so, they would seek by means of new hermeneutical rules to find in the words of the Torah support for these traditional laws. They could thus continue to teach them in connexion with the written Law, that is in the Midrash-form, as of old. Only in a very few cases, when it was absolutely impossible to establish by means of the Midrash any connexion between the traditional practice and the written Law, would they teach the same as independent traditional Halakah, that is to say, in

[52] It might perhaps be said that the theory grew and forced itself upon the teachers without any intention on their part to formulate it. They could not ignore certain practices, considered by the people to be religious. They had to teach them. Since they could not trace their origin, they assumed that they were traditions of the fathers. It was but one step, almost an unconscious one, from this to the declaration, that the fathers received their traditional laws together with the written Law.

the Mishnah-form.[53] This, no doubt, was the very first use made of the Mishnah-form.

However, in this first introduction of the new form with its very limited use lay the possibility of a much wider and more general application. Once it was conceded that, when absolutely necessary, a form of teaching other than the Midrash could be used, it became merely a question of what to consider a case of necessity. This varied with the individual teacher. To some teachers, the Mishnah-form appealed even where the Midrash-form was possible, but not acceptable, as, for instance, when the interpretation of Scriptures offered in support of the decision was not approved. For even the developed Midrash methods and the new rules of interpretation were not all of them accepted by all the teachers. Some teachers would go further than the others. It often happened that rules and interpretations offered by one teacher would be rejected by another. We may presume that it often happened that one teacher would try by means of a new interpretation to support a decision from Scripture, while other teachers, although rejecting that particular interpretation, would accept the decision, either because of the authority of that teacher or because it was accepted by the majority. These other teachers of course could not teach such a decision in the Midrash-form, because they rejected the particular Midrash furnished for the decision. They were compelled to teach such a decision as an abstract Halakah, that is, in the Mishnah-form. Fortunately, we have positive proof that such instances did occur. This actually happened in the

[53] Accordingly the Midrash always remained the main form of teaching and the Mishnah only gradually came to be used alongside of it (see above, notes 8 and 22).

case of the oldest Halakot preserved to us in the Mishnah-form, namely, the Halakot of Jose ben Joezer. As will presently be shown, these decisions were taught by the teachers as independent Halakot in the name of Jose, because the interpretations given by Jose in their support were not approved by the other teachers. To prove that this was the case, we have to examine these Halakot in order to ascertain their exact meaning, also Jose's share in them, and the attitude of the other teachers towards them.

These Halakot are found in the Mishnah, Eduyot VIII, 4, and they read as follows:

העיד יוסי בן יועזר איש צרידה על איל קמצא שהוא דכן ועל כושקה בי מטבחיא (דאינון) דכיין ודיקרב במיתא מסתאב. וקרו ליה יוסי שריא.

Jose ben Joezer of Zeredah stated regarding the Ayyal Ḳamṣa [a certain species of locust] that it is to be considered as clean (i.e. permitted to be eaten), and regarding the liquids of the slaughtering place, that they are to be considered as clean, and that [only] that which has come into direct contact with a dead body becomes unclean. And they [the other teachers] called him 'Jose the Permitter'. There are a few difficulties in these Halakot which we must point out before we can get at their full meaning and demonstrate their bearing upon our theory.

The first strange feature in these Halakot is their language. They are given in Aramaic and not in Hebrew, in which all other Halakot of the Mishnah are given.[54]

[54] There is no other halakic decision in the Mishnah expressed in the Aramaic language. The Aramaic saying of Hillel (Abot I, 13) was either uttered by Hillel while he was still in Babylon, or because it was addressed to the people as a popular saying it was given in Aramaic which was then already the language of the people. The latter reason would also account for the other two sayings in Abot V, 22–3 given in the Aramaic language.

Weiss tries to account for the Aramaic language of these Halakot by assuming that they were remnants of the teachings and decisions of the Soferim (*Dor*, I, p. 66), who according to his assumption delivered all their teachings in the Aramaic language[55] (Introduction to Mekilta, p. iv). Jose, according to Weiss, merely attested to these decisions, but did not originate them. This explanation, however, rests upon false premises. In the first place, if the Aramaic of these Halakot was due to their being decisions of the Soferim, we ought to find many more Halakot in the Mishnah in the Aramaic language. For there are certainly more teachings of the Soferim preserved in our Mishnah. Weiss himself points out (*Dor*, I, p. 65) many Mishnahs which, in his opinion, are very old and originated in the

[55] It is surprising to find that Weiss not only contradicts himself, but also reasons in a circle. He himself mentions many proofs for assuming that Hebrew was used by the majority of the people and by the Soferim. He has absolutely no reason for assuming that the Soferim taught in Aramaic. However, just because these three decisions of Jose are expressed in Aramaic, and because in his opinion Jose received these decisions in their form and in their language from the Soferim, he concludes that the Soferim must have taught in Aramaic. And as a proof for his opinion that these decisions are from the Soferim he can only cite the fact that they are expressed in Aramaic, which, in his opinion, was the language of the Soferim. Weiss here follows Krochmal who assumes (in *More Nebuke Hazeman*, X, pp. 52-3) that the language of the people in the time of Ezra was Aramaic. Both Krochmal and Weiss seem to have been misled by the haggadic interpretation of the passage in Neh. 8. 8, given in b. Nedarim 37b, מפורש זה תרגום, which they understood to refer to an Aramaic translation. Following this Haggadah, they assume that as early as the time of Ezra the Torah had been translated into the Aramaic (see Krochmal, *l. c.*, and Weiss, *Dor*, I, p. 54 ; compare also Friedmann, *Onkelos and Akylas*, Wien, 1896, p. 58). Hence they argue, if an Aramaic translation was necessary, then the language of the people must have been Aramaic. But this is a mistake. There was no translation of the Torah in the time of Ezra, as the people spoke Hebrew, the language in which the Torah was written.

time of the Soferim. Why is it then that this one Soferic saying transmitted by Jose has been retained in the original language, the Aramaic, while all the other teachings of the Soferim, which no doubt are preserved in our Mishnah, have been translated into the later Hebrew?[56] Furthermore, the whole premise that the Soferim gave their teachings in Aramaic, declared by Weiss (Introduction to the Mekilta, *ibid.*) to be beyond doubt, is absolutely false. All indications point to the fact that the Soferim gave their teachings in Hebrew, the language which the people spoke. The exiles who returned from Babylon did not bring with them the Aramaic language. They spoke Hebrew, as is evident from Neh. 13. 24, where Nehemiah complains that some of the children were unable to speak the Jewish language, that is Hebrew. It certainly cannot be assumed that the Soferim, as teachers of the people, would set the bad example of using any language other than their own.[57] The Aramaic language came into use among the people in Palestine at a much later date[58] (see Schürer, *Geschichte*,

[56] According to Weiss, then, we would have to account for another radical change in the method of teaching, namely, the change in the language, the medium of instruction, from the Aramaic to the later Hebrew, and one would have to fix the time and find the reason for the change.

[57] Weiss himself says (*Dor*, I, p. 54) that Nehemiah and the earlier Soferim endeavoured to keep up the Hebrew, and only some of the people did not understand Hebrew perfectly. But if so, why did the Soferim give all their teachings in Aramaic?

[58] Schürer points out that the Aramaic of Palestine could not have been brought along by the returning exiles, as the Aramaic spoken in Palestine was the Western Aramaic and not the Eastern Aramaic spoken in Babylon. Friedmann (*op. cit.*, p. 57) assumes that the language of the returning exiles was the Babylonian Aramaic, but that in the course of time this language was changed and influenced by the Aramaic of Palestine. This assumption is without proof. The proofs cited by Friedmann for the use of the Aramaic language do not prove anything with regard to the time of the Soferim.

II[4], pp. 23–6. Even after the Aramaic language had become the language of the people, Hebrew remained the language of the school and the teachers, the לשון חכמים. For this reason we have all the Halakot in the tannaitic literature, such as Mishnah and halakic Midrashim, given in Hebrew.

Aside from all these considerations as to the language of the Soferim, it is altogether wrong to connect these three Halakot with the Soferim. They are not Halakot of the Soferim, which Jose merely transmitted and attested to, they are decisions which originated with Jose himself and for which he offered reasons and scriptural proofs. And this brings us to the discussion of the second difficulty in our Mishnah, namely, the introductory term העיד. This term העיד means literally to testify, to state as a witness what one knows or has seen or heard. Some scholars have understood the term העיד in this Mishnah in this very sense, and have declared it to mean that Jose merely testified that these decisions were older traditional laws and practices. As we have seen above, Weiss assumed that they were decisions of the Soferim for the genuineness of which Jose vouched. But it is absolutely incorrect to take the term העיד here in the sense that Jose merely 'testified' to older traditional laws and decisions. As far

The Aramaic became the language of the Jews in Palestine in the first half of the second century B. C. The proofs adduced by Friedmann (*l. c.*, p. 58) refer to a much later date than the second century B. C. Saadya Gaon, in the preface to his Sefer Ha-Iggaron (Harkavy, *Zikron la-Rishonim*, V, p. 54), states that about three years before the rule of Alexander in Palestine the Jews began to neglect Hebrew and adapted the language of the other nations in the land (i. e. Aramaic). While his date is based upon a wrong chronology (see pp. 113 ff.), he certainly is correct in his statement as to the fact that the returning exiles spoke Hebrew and that it was only after many years that they began to speak Aramaic.

as we know, the method of procedure followed by the teachers of the Halakah in receiving a teacher's testimony in regard to some rule or practice was to consider the testimony alone. They either decided according to it, or if for some reason they would not do so, they stated that reason. Without reflecting upon the testifying teacher, they would seek to invalidate the testimony or to deny its bearing upon the case under discussion (compare Eduyot II, 2; VIII, 3; Sanhedrin VII, 2; and Tosefta Sanhedrin IX, 11). Nowhere do we find that they hold the testifying teacher responsible for the decision which he reports.[59]

[59] The case of Akabiah b. Mahalalel (M. Eduyot V, 6) whom the other teachers held responsible for the decisions which he stated before them, cannot be cited as an instance against this statement. It is doubtful, to say the least, whether the four decisions of Akabiah, although likewise introduced with the term העיד, were old traditional Halakot to which he merely testified.

The controversy between Akabiah and the other teachers is shrouded in mystery. The later teachers, for reasons best known to themselves, did not care to report about it in detail. They acknowledged only with reluctance that there were disputes among the older teachers about the traditional laws, that such an eminent teacher as Akabiah protested against what was accepted by others as traditional laws, and that harsh means were used to silence such protests. The knowledge of these facts would reflect unfavourably upon the validity of the traditional law. For this reason one of the later teachers also denied the fact that Akabiah was put under ban (*ibid.*). From the meagre reports preserved in our sources it is difficult to obtain a clear account of the nature of the dispute and of what actually took place between Akabiah and the other teachers. It is, however, very probable that Akabiah was the author of these four decisions, and that the term העיד in this case is likewise to be taken in the sense of 'stated', 'declared', and not 'testified'. This is apparent from the very demand to retract which the other teachers made. They could not have asked him to take back his testimony, but they could ask him to change his opinion. From the expression used in this demand to retract, חזור בך מארבעה דברים שהיית אומר, it is also evident that Akabiah was his own authority in these four decisions, that he was the one who said these things, and not that he merely testified that others said them. Again, in his advice to his son to

Here, in the case of Jose, however, we see that they called Jose שריא 'the Permitter', thus making Jose responsible for the decisions. If Jose had been merely testifying to the decisions of former teachers, then those former teachers, the Soferim or whoever they may have been, were the ones who 'permitted', and not Jose. Why, then, call Jose שריא 'the Permitter'?

This is even more strange since we do not hear that the other teachers gave any argument against his decisions and, as we shall see, they even accepted them להלכה 'as a norm of practice'.[60] It is therefore evident that these Halakot, though introduced with the phrase העיד יוסי, were

follow the majority, Akabiah uses the words מוטב להניח דברי היחיד ולאחוז בדברי המרובים 'It is better to abandon the opinion of an individual and to hold to the opinion of the many' (*ibid.*, 7). From these words it is also evident that the decisions of Akabiah were the opinion of an individual teacher (i. e. himself), and not the opinion of the majority of the teachers from whom Akabiah received them. We must therefore assume that the words אני שמעתי מפי המרובים . . . אני עמדתי בשמועתי (*ibid.* 7), which are put into Akabiah's mouth, are a later addition. They form an attempt on the part of a later teacher to minimize the sharpness of the conflict between Akabiah and his contemporaries. Its purpose was to make it appear as if there had always been perfect harmony among the teachers, and that only in this case each had a different tradition which he had to follow. This, however, is a very poor attempt, for it does not explain how there could have been different traditions. It only shifts the date of the conflict of opinions from the time of Akabiah and his colleagues to the time of their teachers and predecessors.

It is also possible that the same later author who thus attempted to exonerate Akabiah added the word העיד, to introduce Akabiah's decision, thus representing them as being based upon an older tradition which Akabiah had.

[60] Levy erroneously states (*Ozar Neḥmad*, III, pp. 29–30) that Jose's decisions were ignored by the other teachers. From the talmudic discussion Pesaḥim 16a (comp. also Maimonides, Yad. Tum'at Oklin, X, 16) and Abodah zarah 37ab it is evident that the decisions of Jose were accepted by the other teachers and made the norm for practice, להלכה.

not older traditional laws transmitted by Jose as a mere witness, but Jose's own teachings. He was the one who 'permitted', and he deserved the name ישריא. This is further confirmed by the discussions of the Amoraim in the Talmud who try to explain these decisions. Rab and Samuel in attempting to give a reason for one decision of Jose's, use the word קסבר 'he (Jose) held', or 'was of the opinion'. And when the reason for another decision is asked, the phrase במאי קמיפלגי 'in what do they (Jose and his opponent or opponents) differ' is used (Abodah zarah 37 a, b). Again, when R. Papa ventured to say in regard to one of the decisions that it was an old traditional law, הילכתא גמירי לה, he was promptly refuted (Pesaḥim 17 b). Thus we see that in the talmudic discussions about these decisions they are taken as Jose's own teachings and not as older traditional laws.

This correct interpretation removes all the difficulties from our Mishnah. The term העיד is to be taken here in the sense of 'declared', or 'stated'. The Aramaic in which these decisions are expressed is to be accounted for, not by their alleged origin in the early days of the Soferim, but rather by the comparatively late date at which they originated. It is probably also due to the peculiar circumstances which gave them their present form. These decisions, as we have them, are not preserved to us in Jose's own words, nor in the form in which he gave them. Jose gave these decisions in Hebrew and in Midrash-form. He taught them in connexion with the several Scriptural passages on which he based the decisions. The teachers, however, who transmitted these decisions, for reasons of their own (to be stated below), detached these decisions from their scriptural bases and expressed them in the Aramaic language. That Jose

had scriptural proofs for his decisions, is evidenced by the fact that the Amoraim in the Talmud endeavour to find these proofs or reasons. Evidently the Amoraim were convinced that some scriptural proofs did underlie these decisions, although not mentioned by the teachers who transmitted them. By following the Amoraim, whose analysis of these Halakot probably echoes older tradition, we will be able to find the midrashic proofs given by Jose in support of his decisions.

In the case of one decision the midrashic arguments of Jose and his opponents have fortunately been preserved, namely, in the case of the third decision which is ודיקרב במיתא מסתאב 'one who touches a corpse becomes unclean'. We must first arrive at the correct meaning of the decision. This decision does not mean simply that one who touches a corpse becomes unclean, for this is expressly stated in the Bible in regard to a human corpse (Num. 19. 11) as well as in regard to the carcase of an animal (Lev. 11. 27 and 29) or a reptile (*ibid.*, 31). Furthermore, Jose is called 'the Permitter', evidently because in all three decisions he permits things that were formerly considered forbidden. He, therefore, could not mean to teach us, in this last decision, concerning what becomes unclean and therefore forbidden. We arrive at the correct meaning of this decision by emphasizing the word במיתא [61] and interpreting

[61] Frankel (*Hodegetica*, p. 32) explains the decision of Jose to mean that Jose decided that one who has come into direct contact with a corpse becomes unclean but one degree less than the corpse itself, i. e. he becomes an אב הטומאה and not an אבי אבות הטומאה. Frankel bases his explanation on the expression מסתאב 'becomes unclean', since it is not said מיסאב, which could mean also 'he makes unclean'. But this explanation is wrong. In the first place, if the נוגע במת becomes only an אב הטומאה he could still make others unclean, and thus be a מיסאב and not merely a

it to mean '[only] he who *touches* a dead body' (of a human being or an animal or a reptile) becomes unclean', but one who touches a thing or person that has itself become unclean by contact with a corpse (i.e. דיקרב בדיקרב)[62] does not become unclean. This interpretation of Jose's third decision is given in the Talmud (Abodah zarah 37 b) and is correct despite the objections raised by Raba. As stated correctly in the Talmud (*ibid.*), the other teachers before and during the time of Jose were of the opinion that

מסתאב. Secondly, as Weiss (*Dor*, I, p. 100, note) pointed out, the reading מסתאב is not genuine, some editions having indeed מסאב. Moreover, מסאב does not mean 'makes unclean', but simply 'is unclean'. Jose's decision probably was that one can become unclean only by direct contact with a corpse, the emphasis being on במיתא. If, however, one touches a thing or another person that had become unclean by contact with a corpse, he does not become unclean, because he did not come in direct contact with the corpse.

[62] The later talmudic teachers seek to harmonize Jose's decision with the later teachings of the Halakah. They therefore modify the meaning of the term דיקרב בדיקרב, and explain it so as to agree with the later teachings of the accepted Halakah. But the original meaning of the term דיקרב בדיקרב, which is apparently identical with the phrase נגע אדם במגע טמאות in Sifra, was altogether different from the meaning given to it in the talmudic discussion. To harmonize Jose's decision with the later teachings of the Halakah, one could interpret it to mean that only certain kinds of דיקרב בדיקרב are clean. That is to say, Jose declared that not everything that has been in contact with a corpse can make a person that touches it unclean. Jose, then, meant to exclude earth, stone, and wood. His decision accordingly was directed against an older Halakah which declared that one who touches wood, stone, or earth that has become defiled by contact with a corpse, becomes unclean. Such an old Halakah seems to be expressed in the 'Fragments of a Zadokite Work' (Schechter, *Documents of Jewish Sectaries*, vol. I, p. 12, lines 15–17). Compare, however, Ginzberg's ingenious explanation of this passage in the *Monatsschrift*, 1912, pp. 560–61). It seems, however, more probable that Jose declared every kind of דיקרב בדיקרב clean, even a person who touches another person who had become defiled by contact with a corpse. Jose, then, is against the later teachings of the Halakah that a טמא מת becomes an אב הטומאה and can make others unclean. See below, note 64.

דיקרב בדיקרב, one who touches a person who has become unclean by contact with a corpse, also becomes unclean, מדאורייתא, according to the Law. They must have derived their opinion either from a literal interpretation of the passage in Num. 19. 22, כל אשר יגע בו הטמא יטמא, as stated in the Talmud (*ibid.*) or, what is more likely, from the passage in Lev. 5. 2, או נפש אשר תגע בכל דבר טמא, which literally means one who touches any object that is unclean. This apparently includes one who touches an object which has become unclean through contact with a corpse. This seems to me to have been the scriptural basis for their theory. But Jose interpreted this scriptural passage differently, so that he could give his decision, permitting a דיקרב בדיקרב, and declaring such a one as clean.

Indeed, we find these two opposing views preserved in Sifra, *Ḥobah*, XII, ed. Weiss 22 d. There we read as follows: או נפש אשר תגע בכל דבר טמא, הזקנים הראשונים היו אומרים יכול אפילו אם נגע אדם בטמא טמאות יהא חייב ת"ל בנבלת חיה בנבלת בהמה מה אלו מיוחדין שהם אבות הטומאה יצא דבר שאין אב הטומאה 'Or if a person touches any unclean thing' (Lev. 5. 2). The former teachers said: 'One might argue [from the expression "any unclean thing"] that even if a person has touched anything that had come into contact with unclean things, he should also be [considered unclean and consequently] subject to the law mentioned in this passage. The scriptural text teaches us, therefore, [by specifically mentioning] "whether it be a carcase of an unclean beast, or a carcase of unclean cattle, or the carcase of unclean creeping things" that only these specific objects which are original causes of uncleanness [can by their contact make a man unclean], but it excludes anything else which is not an original cause of uncleanness.' The term יכול 'one might

argue', points to an actual opinion held by some people, which the Midrash seeks to refute. As the view of the זקנים הראשונים here expressed is identical with the view of Jose,[63] viz.: that only דיקרב במיתא becomes unclean, the possible opinion introduced by יכול refers to the view actually held by the teachers before Jose, or by those who disputed with him. We can, therefore, ascertain the new method used by Jose from the interpretation given in Sifra in the name of the זקנים הראשונים. This interpretation says that the meaning of the general term בכל דבר טמא is defined and limited by the following special terms בנבלת בהמה חיה או שרץ, so as to include only the latter or such as are exactly like them. Accordingly we have in this instance for the first time the application of the rule of כלל ופרט אין בכלל אלא מה שבפרט. And if we include the passage מה אלו מיוחדין in the original Midrash, which however is doubtful,[64] Jose or

[63] The identity of Jose's decision with the one quoted in Sifra in the name of the זקנים הראשונים is also assumed by Professor I. Levy as quoted by S. Horowitz in Sifre Zutta, Breslau, 1910, p. 7, note 5.

[64] It seems to me that the passage מה אלו מיוחדין שהן אבות הטומאה is not of the original Midrash of the זקנים הראשונים, but a later addition. For, if it had been a part of the Midrash of the older teachers, then R. Akiba's Midrash which follows it would not have added anything and would have been entirely superfluous. The original Midrash of the older teachers closed with the words בנבלת שרץ . . . ת"ל. The older teachers interpreted this scriptural passage as a כלל ופרט, to mean only what is expressly mentioned in the special term אין בכלל אלא מה שבפרט. They excluded even אבות הטומאה. To this R. Akiba added another Midrash according to which only what is not an אב הטומאה is excluded. If, however, we include the passage מה אלו מיוחדין שהן אבות הטומאה in the original Midrash of the older teachers, we must assume that the term אבות הטומאה is used by them in a narrow sense to designate 'the original sources of uncleanness', and not in the technical sense in which it is used usually to designate a certain degree of uncleanness (see Horowitz, *op. cit.*, p. 8).

That the זקנים הראשונים excluded even so-called אבות הטומאה is

the זקנים הראשונים must have considered the following passage as another כלל אי אישר יגע בכל טומאת אדם and formulated the rule כלל ופרט וכלל אי אתה דן אלא כעין הפרט, and accordingly included other אבות הטומאה which are like מיתא.

From a comparison of the explanation given to Jose's first decision in Abodah zarah 37 a with Ḥullin 66 a we learn that the decision declaring איל קמצא as clean was reached by Jose also by means of applying the rule כלל ופרט וכלל to include כעין הפרט (see Rashi Ab. zarah, *ad loc.*, and Tosfot Yomtob to Eduyot VII, 8). In regard to the decision about the משקה בי מטבחיא, it is hard to find out by what means Jose derived this from the Scriptures, as we are not quite sure as to the exact meaning of this decision. Even the later Talmudic teachers held different opinions regarding its meaning. According to Rab, Jose's decision declared these liquids altogether clean and not subject to defilement, דכן ממש, while according to Samuel the decision was merely that these liquids cannot communicate to others their defilement, but in themselves may become defiled, דכן מלטמא טומאת אחרים (see Pesaḥim 17 a). Rab's explanation seems, however, to be more plausible and warranted by the plain sense of the word דכן which means, simply, דכן ממש. In this case we may safely assume that Jose arrived at this decision also by means of the

conceded even by Rabed in his commentary on Sifra, *ad loc.* (This shows that he felt the difficulty of finding a difference between their Midrash and the Midrash of R. Akiba.) Rabed, however, assumes that the older teachers decided this only with regard to punishment for entering the sanctuary in such a state of uncleanness, ואין חייבין עליהם על ביאת מקדש. Levy, as quoted by Horowitz, follows Rabed herein. But it is very unlikely that the older teachers made such a distinction. If a person was considered unclean he would have been punished for entering the sanctuary in his state of uncleanness. If he was not to be punished for entering the sanctuary, that meant he was not at all unclean.

method of using the כלל ופרט rule. For in Lev. 11. 24, where the defilement of liquids is spoken of, it is said: וכל משקה אשר ישתה בכלי יטמא. Jose saw in the words אשר ישתה 'which is drinkable' or 'which is drunk out of a vessel', a limiting special term, פרט, which qualifies and limits the general term, וכל משקה, and excludes from the latter the משקה בי מטבחיא which 'is not drinkable' or 'is not drunk out of a vessel'. In the same way Eliezer (in Sifra, *Shemini*, IX, Weiss 55 a) applies this principle to exclude משקה סרוח.[65]

Thus we find that Jose derived all his decisions from the Scripture by means of interpretations, and that these interpretations were according to new methods. These new methods, however, were rejected by his contemporaries, because they were novel. The teachers of the next generation and possibly even some of his colleagues, respecting the authority of Jose, accepted his decisions but hesitated to recognize the validity of the new rule of כלל ופרט which Jose used. Since they did not accept this method they could not teach these decisions together with the scriptural

[65] It is possible that in the saying of R. Eliezer, the representative of the older Halakah, we have the same decision which was given by Jose. Jose, however, directed his decision to a certain kind of undrinkable liquid, the משקה בי מטבחיא, while the older Halakah as represented by R. Eliezer formulated the same decision in a general way, so as to apply it to all undrinkable liquids, משקה סרוח. Accordingly, the statement of Rab (Pesaḥim 17 a) that Jose held that there was no biblical law which would subject liquids to uncleanness, קסבר אין טומאה למשקין מן התורה, is not correct. Jose excluded only undrinkable liquids from these laws. It is very unlikely that as early as the time of Jose there was a rabbinical law declaring liquids subject to uncleanness, גזירה למשקין מדרבנן. It should be noticed that there is much confusion about the laws of טומאת משקין, which made it difficult to ascertain the real meaning of Jose's decision, the more so as the later teachers sought to harmonize it with the later halakic rulings about liquids.

proofs given to them by Jose. They therefore merely mentioned them as decisions given by Jose. They would not even teach them in Hebrew, the language in which they taught all their Halakot connected with the Scripture in Midrash-form. They formulated them in the Aramaic language, then already popular, just as they would mention decisions given by secular authorities, or just as they would refer to popular customs in the language of the people, rather than in the language of the school.[66] For this reason they introduced these Halakot with the formula העיד יוסי,[67] Jose 'declared', or 'stated', i. e. Jose is the authority for these decisions; and they properly called him יוסי שריא, 'Jose the Permitter'.

On the same principle and in the same manner, the teachers dealt with another decision given by Jose ben Joezer and his colleague Jose ben Joḥanan of Jerusalem, viz. that glassware is subject to the laws of Levitical uncleanness. An old tradition reports that the two Joses decreed that the laws of uncleanness apply to glassware, גזרו טומאה על כלי זכוכית (Shabbat 15 a). There is no reason

[66] In the Midrash form, when the Halakah forms a sort of a commentary on the Hebrew text, the use of the Hebrew language especially recommended itself. In many cases the comment consisted merely in emphasizing the important words in the text, or in calling attention to a peculiar construction or to a special form. All these peculiarities of the Midrash would have made it very difficult to use another language than Hebrew. In this manner Hebrew remained the לשון חכמים, the language of the school. It continued to be used for teaching Halakah even when the latter was separated from the Hebrew text of the Scriptures and taught independently in Mishnah-form.

[67] See above, note 30. There is no doubt that the introductory formula העיד was added by a later teacher. It may be that in the case of Jose, as in the case of Akabiah (see above, note 58) the later teacher who added this formula meant to suggest by it that Jose had a tradition on which he based his decisions, so that he was not the author or innovator of the same.

to doubt the genuineness of this report in the Babylonian Talmud, nor are there any reasons for ascribing this decree to other authors as Graetz has done.[68] The reason for this

[68] Graetz, *Geschichte*, III[4], p. 707, is inclined to ascribe this decree about glassware to Simon b. Shetaḥ and not to Jose b. Joezer. He bases his theory solely on the passage in p. Ketubbot, VIII, 11, 32 c, where it is said of Simon b. Shetaḥ, והוא התקין טומאה לכלי זכוכית. The correctness of this statement is questioned by the Talmud on the ground that it conflicts with another reliable report, which ascribes this decree to the two Joses. The explanation is then offered that both reports are correct. The decree was first issued by the two Joses, but was subsequently forgotten or neglected, and then revived and reintroduced by Simon b. Shetaḥ. This talmudic explanation may be correct. The hesitancy on the part of the other teachers, Jose's colleagues, to accept the interpretation on which he based his decree may have necessitated another formal decree or a confirmatory act in the days of Simon b. Shetaḥ. Graetz, however, evidently does not think so. He discards this explanation of the Talmud as a poor attempt to harmonize these two conflicting reports. However, granted that this explanation is merely a harmonization, we can reject the explanation but not the objection raised by the Talmud. There is no reason whatever for ignoring all the other reports which ascribe the decree to the two Joses and accepting this one which ascribes it to Simon b. Shetaḥ. This is all the more incorrect as it is apparent that this one report is based on a mistake. Simon b. Shetaḥ decreed against metal-ware, כלי מתכות (Shabbat 14 b, comp. Graetz, *l. c.*, pp. 706, 708). In a report about this decree of Simon some one probably made the mistake of substituting כלי זכוכית for כלי מתכות. R. Jonah's saying cited there in the Talmud (p. Ketubbot, *l. c.*) is accordingly another answer to the question raised there about the two conflicting reports. It is introduced for the purpose of correcting the mistake in the one report, and telling us that Simon decreed only against metal-ware כלי מתכות and not against כלי זכוכית. The decree against the latter, then, really came from the two Joses as reported repeatedly in p. Shabbat I, 3 d, p. Pesaḥim 27 d, and b. Shabbat 15 a.

Graetz is wrong in assuming that the Babylonian Talmud does not contain correct information about this subject, and that the utterance of an Amora Zeera is mistaken in the Babylonian Talmud for a Baraita. The contrary is true. This report is an older Baraita. In the Palestinian Talmud, however, this Baraita is mentioned by the Amora Zeera, as there are many such instances of Baraitot being quoted by Amoraim and appearing as if they were the sayings of the Amoraim (see Frankel, *Mebo ha-Jerushalmi*, pp. 26-7).

decision was (as is correctly given by Johanan, in the name of Simon ben Lakish) that glass is made of sand and is therefore the same as any other earthen vessel, כלי חרס (*ibid.*, 15 b). The Talmud, discussing this explanation of Simon ben Lakish, raises the following question: 'If glass-ware has been declared like כלי חרס because being made of sand it belongs to the class of earthen vessels, why then is it not considered by the Halakah as כלי חרס in all respects?

In the discussion that follows, the Talmud (*ibid.*) finds difficulties in answering this question. We are not concerned with the answer given in the Talmud, because it is merely an unsuccessful attempt to harmonize the decision of Jose with later practice. The significant thing for us is that this question was raised. It indicates that the Amoraim experienced difficulty in understanding the decision, although

From the discussion in the Babylonian Talmud about this report it is evident that they were well informed about this case. Objections are raised against part of this tradition, viz. the report about the decree of טומאה על ארץ העמים. They show that there is another report which ascribes it to the רבנן דשמונים שנה. The two reports are, however, harmonized. But they could not find any contradictory report about the decree against כלי זכוכית.

The reading ועל כלי זכוכית in the report of the activity of the רבנן דשמונים שנה is missing in the older codices. See Zeraḥiah Halevi in Hamaor to Shabbat, *ad loc.* From the fact that no answer or solution is given in regard to כלי זכוכית it is also evident that the report about the act of the רבנן דשמונים שנה only mentioned the decree of טומאה על ארץ העמים.

Graetz's argument, that this institution presupposes the common use of glassware among the people, a practice which could not have been the case in the time of the two Joses, is rather weak. Although the great majority of the people may not have lived in luxury in the time of the two Joses, yet there were at least some rich people who could and did indulge in the luxury of using glassware. It was just at the first introduction of these vessels to Judea by some rich people that the question about their status in regard to the laws of cleanness came up. The teachers then declared that they were subject to the laws of uncleanness.

they were aware of the basis upon which Jose founded his decision. To this question raised in the Talmud we may add the following question which will disclose another weak point in the explanation of the decision. If this decision of the two Joses was reached by interpreting the biblical term כלי חרס so as to include glassware (because it is made of sand) then their decision was in reality a biblical law, as no distinction can be made between vessels of clay and vessels of sand, both being earthen vessels. Why then was this decision ascribed to the two Joses and characterized as an arbitrary decree, a mere גזירה? The following explanation will give the answer to both questions mentioned above and will remove the difficulties experienced by the talmudic teachers in understanding this decision. Jose and his colleague interpreted the biblical term כלי חרס to mean a vessel made of any kind of earth, and, consequently, he included in it כלי זכוכית which he indeed considered in all respects like כלי חרס. The younger teachers, however, would not accept the broad definition given by Jose to the term כלי חרס so as to include כלי זכוכית also. For this reason they refused to follow Jose in considering glassware like כלי חרס in all respects. Out of respect for the two Joses, some of their contemporaries or successors accepted the decision, but designated it merely as a rabbinical decree, a גזירה. They would therefore apply to כלי זכוכית only certain of the laws of uncleanness that pertained to earthen vessels, כלי חרס. These other teachers would therefore not teach this decision in the Midrash-form together with the passage וכל כלי חרס, as Jose no doubt did. They would teach it as an independent Halakah, as a rabbinical law that has no scriptural basis but rested merely upon the authority of the two teachers.

The motive for accepting a teacher's decision without accepting his proof, may be found either in the respect entertained by the younger teachers for the author of the decision, or in their belief, that the author of the decision was in possession of a tradition unknown to them.[69] In either case they had no hesitancy in rejecting the proofs which they considered unconvincing or too novel. Whatever their motives, it is certain that the younger contemporaries of Jose or his successors accepted his decisions and taught them in his name although without his proofs for them. The latter they rejected, because they did not approve of his new methods of interpretation.

This attitude, despite its inconsistency, was quite common among the teachers of the Halakah.[70] The most striking instance of this practice is to be found in the story of Hillel and the Bene Batyra (Yerush. Pesaḥim 33 a). In this account we are told that all the arguments and scriptural proofs advanced by Hillel in favour of the decision that the Passover sacrifice should set aside the Sabbath were rejected by the Bene Batyra, although Hillel had learned all or most of these proofs and interpretations from his teachers Shemaiah and Abtalion. But when, at last, he told them that he had received the decision itself from Shemaiah and Abtalion, they forthwith accepted the

[69] Compare the idea expressed in the saying: כך היתה הלכה בידם ושכחוה ועמדו השניים והסכימו על דעת הראשונים, often used to explain the acts of the teachers who instituted new laws (p. Shebiit 33 b and p. Ketubbot 32 c). It is possible that such an idea was conceived in very early times, and possibly it was such a view that guided the successors of Jose in their acceptance of his decisions.

[70] Compare the phrase אם הלכה נקבל ואם לדין יש תשובה (M. Yebamot VIII, 3 and M. Keritot III, 9) which clearly shows that they were ready to accept a Halakah although rejecting the proof offered for that Halakah.

same. אף על פי שהיה יושב ודורש להן כל היום לא קיבלו ממנו עד שאמר יבא עלי כך שמעתי משמעיה ואבטליון. We need not discuss the historicity of this report, a point which is, to say the least, very doubtful. Whatever we may think of the account, we may be sure that its author pictured accurately the attitude which teachers usually assumed towards the decisions given in the name of older teachers. It is evident from this account that its author certainly believed that teachers or authorities like the Bene Batyra (whoever they may have been) were in the habit of accepting decisions given in the name of a departed teacher, even in cases where they would refuse to accept the proofs for the decisions also given in the name of that teacher.[71] Whether this actually took place in the case of Hillel and the Bene Batyra is of minor importance. Accordingly, we learn from this report that in the time of Hillel there were certain teachers who raised objections to the new methods which Hillel had acquired from the great exegetes דרשנים גדולים, Shemaiah and Abtalion. However, the same teachers would not hesitate to accept a practical decision which Hillel reported in the name of these two authorities.

[71] Compare Bassfreund (*op. cit.*, p. 19, note 3). All the difficulties which he finds in this story are removed by our explanation. Most likely Hillel had learned from Shemaiah and Abtalion not only the decision but also all the interpretations which he offered as arguments in favour of the same. He also gave these interpretations in the name of his teachers. The Bene Batyra, however, refused to accept these interpretations, because they objected to the new methods developed by Shemaiah and Abtalion. It was their opposition to these new methods of interpretation which kept them from attending the schools of Shemaiah and Abtalion, and not their negligence, as one might judge from Hillel's reputed remark: עצלות שהיתה בכם שלא ישמשתם שני גדולי הדור. Their respect for these great teachers, however, led them to accept their decision, even though they would not accept their proofs.

That which happened in the time of Hillel also happened in the time of Jose ben Joezer. When he used new methods of interpretation for the first time, his colleagues hesitated to follow him, although they did accept some of the decisions which he derived from the Scripture by means of these new methods.

We can easily understand the reason for such an attitude, inconsistent as it may appear. To accept the proof for a decision implied approval of the method by which that proof was obtained. This would open the door to further application of these new methods, so that there was no way of telling what decisions might be thus arrived at. Against this danger the teachers attempted to guard themselves, but they never went so far as to decide, in any practical case, against the authority of an older teacher. For this reason they would often accept the decision but reject the proofs.

In the above, we have digressed for the purpose of making clear that difference of opinion concerning methods of interpretation prompted the teachers to sometimes divorce a Halakah from the scriptural proof. We have also seen that the three oldest Halakot preserved in Mishnah-form, namely, the three decisions of Jose, owed their present form to this very reason. They were expressed in Mishnah-form by Jose's disciples who felt constrained to reject the proofs advanced by Jose because of the novelty of his methods of interpretation.

Accordingly, it may be stated with certainty that the Mishnah-form was first used to teach those customs and practices which originated during the time when there was no official activity of the teachers. Having no scriptural basis, they could not be taught in connexion with the

Scripture, i.e. in the Midrash-form. The Mishnah-form was further used to teach those traditional laws and decisions which some teachers attempted to derive from Scripture by means of new methods of interpretation. While some of their contemporaries or disciples accepted the new methods, and therefore taught these decisions in the Midrash-form, others, and by far the majority, rejecting the new methods, accepted only the decisions. Finding no convincing proofs for such laws in the Bible, they taught them independently of scriptural proof, i.e. in the Mishnah-form. These two motives for teaching Halakot in the Mishnah-form are really one and the same. Whether no midrashic proof could be found for a decision, or whether the midrashic proof suggested was deemed unconvincing, the motive for the Mishnah-form was the same—the absence of a sound Midrash.

To this first motive there soon were added other motives for the use of the Mishnah-form. Certain considerations in the course of time urged the teachers to extend its use even to such Halakot as had, in their opinion, good scriptural proofs and could well be taught in connexion with the Scripture in the Midrash-form. These other motives and considerations arose from the disputes between the Sadducees and Pharisees. They became stronger and stronger with the ever-widening breach between the two factions.

As the dispute between the parties progressed, the antagonism between them naturally became sharper. Each party came to assume a distinctive attitude towards the Law, and they consistently worked out their respective lines of attack and defence. The Pharisees came to recognize the binding character of the traditional law, תורה שבעל פה,

and demanded that it be considered of equal authority with the written Law. The Sadducees, on the other hand, became more outspoken in their denial that the traditional law possessed absolute authority. These differences had their effect upon the forms used in teaching the Halakah.

As we have seen above, the Midrash was used for the purpose of grafting new decisions and practices upon the words of the written law, when the latter only was considered the sole authority binding upon the people. To give sanction to any decision or traditional law, it was necessary to find for it some indication in the authoritative Book of the Law and thus to present it as contained or implied in the written Law. As soon as Tradition was raised to the rank of the Law and thus recognized as an independent authority parallel to the written Law, there was no longer that urgent need of connecting each and every Halakah with the words of the written Law in the form of the Midrash. A halakic decision based on a tradition was now considered by the teachers, and represented by them, to be just as authoritative as one derived from the written Torah by means of an interpretation or Midrash. The Halakah as traditional law could now stand without the support of a scriptural basis, and could therefore be taught independently in the Mishnah-form. Not only was there no more need for teaching all the Halakot together with the written Law in the Midrash form, but there were also sufficient reasons for the Pharisaic teachers to teach Halakah as traditional law without even attempting to connect the same with the written Law. For, in so doing, they emphasized their belief in the twin-law שתי תורות; that is, the belief that there were two equal sources of religious teaching, one the written Torah and the other

the unwritten Oral Law, both of which must be studied alike, and that one is as important as the other. Of course they continued to develop the Midrash method for the purpose of deriving new Halakot from the one source—the written Law. The Halakot thus derived from the Scriptures were taught together with the latter, in the Midrash-form. In this way, they could well continue to use the Midrash-form even after the Mishnah-form was adopted. They were apprehensive only of using the Midrash-form exclusively, because such an exclusive use might reflect upon their theory of an authoritative Oral Law. The very endeavour to connect all Halakot with the written Law by means of the Midrash would have meant to acknowledge that there was only one Law, namely, the one contained in the Book. They would thus have conceded to the Sadducces the disputed point that the traditional law, תורה שבעל פה, was not of equal authority with the written Law, תורה שבכתב. By the parallel use of both forms, Midrash and Mishnah, they showed that they treated both sources alike. By teaching in Mishnah-form even such Halakot as could be derived from the written Law and taught in the Midrash-form, they showed that they were not very anxious to find scriptural support for each Halakah. This was a strong expression of their belief in the equal authority of the two Torot, a belief that made it of little consequence whether a Halakah was taught in the Midrash-form, as derived from the written Law, or in the Mishnah-form, as a traditional law.

Furthermore, the exclusive use of the Midrash-form threatened to endanger the authority and the teachings of the Pharisees. These apprehensions caused the Pharisaic

teachers to make more extensive use of the Mishnah-form and in some cases even to prefer the same to the Midrash-form. For to give all the halakic teachings of the Pharisees in the Midrash-form as based on the Scripture would have exposed these teachings to the attack of the Sadducees. As we have seen above, the hesitancy on the part of some teachers to recognize the validity of the new interpretations offered in support of certain decisions led to their teaching such decisions in Mishnah-form. The new rules and methods gradually found recognition among the Pharisaic teachers, who would admit the validity of interpretations derived by means of these new methods. Thus they were able to furnish a Midrash for almost every Halakah. But among the Sadducees the objection to these new methods was very strong and they absolutely denied their validity. If the Pharisees arrived at a certain decision by means of a new interpretation, the Sadducees could always dispute that decision by refuting the scriptural proof offered for it. It was possible for them to argue that the Pharisaic interpretation was unwarranted and that the scriptural passage did not mean what the Pharisees tried to read into it. The Pharisees feared that such arguments against their teachings raised by the Sadducees might have a detrimental effect upon the young students and draw them away from the Pharisaic teachings. The Pharisees were well aware that some of their interpretations were rather forced, and that their opponents' arguments against these interpretations were sound. Wherever possible, the Pharisees were, therefore, anxious to avoid such disputes, or to prevent their pupils from entering into them. The easiest way to avoid these disputes concerning the validity of the scriptural proofs for the Pharisaic teachings, was to avoid the mention of any

such doubtful scriptural proofs at all, that is to say, to use Mishnah rather than Midrash.[72] After the Pharisaic teachers

[72] It should be noticed that it was only with the younger students that the teachers pursued this pedagogical method of suppressing scriptural proofs, when these were not quite perfect, and of teaching the Halakot in Mishnah-form without any proof whatsoever. They considered it necessary to take this precaution to prevent the young students from being shaken in their belief in tradition and from doubting the authority of the traditional law. To the advanced students, however, they would unhesitatingly communicate all the scriptural proofs or even artificial supports which they had for their teachings. Hence among the advanced students the use of the Midrash-form was prevalent (see above, note 3).

A few talmudic sayings may be cited here to prove that it was the tendency among the teachers to withhold from the students while young the arguments and reasons for the laws and to keep them from disputes with their opponents. Simon b. Ḥalafta says: בשעה שהתלמידים קטנים כבוש לפניהם דברי תורה הגדילו ונעשו כעתודים גלה להם רזי תורה 'As long as the pupils are young hide from them [some] words of the Torah. When they are more mature and advanced reveal to them the secrets of the Torah' (p. Abodah zarah II, 41 d). Simon b. Joḥai says: אין לך רשות לשקע עצמך בדברי תורה אלא לפני בני אדם כשרין 'You are not permitted to enter into a deep discussion of the words of the Torah except in the presence of pious and good people' (*ibid.*). By 'pious and good people' בני אדם כשרין are evidently meant people who follow the Rabbis and accept the teachings of the traditional law. According to the Gemara (*ibid.*) the two sayings of Simon b. Ḥalafta and Simon b. Joḥai go together. There is a subtle connexion between them. This connexion consists in the fact that both aim at the same purpose, viz. not to give the opponents of the Rabbis and the traditional law any opportunity to attack the traditional law by refuting the arguments or proofs brought for the same by the Rabbis.

We see from these two sayings that even as late as the middle of the second century C. E., when the followers of the Sadducean doctrines were no more so strong, neither in numbers nor in influence, the Rabbis were still anxious to avoid disputes with them, and would therefore not tell the young pupils all their arguments and reasons for the laws, lest the opponents might refute them and upset the beliefs of the young pupils. Compare the saying of Jose b. Ḥalafta, אל תתנו מקום לצדוקים לדרות, M. Parah III, 3, and see below, note 80.

In the days of the earlier teachers when the influence of the Sadducees and their followers was stronger, this tendency among the teachers of the traditional law, to keep the young students from entering into discussions

agreed upon deriving a certain Halakah from a given passage, they preferred to teach that Halakah in an independent form without citing passage or interpretation. Such a Halakah or decision could then be received in good faith by the students who followed the Pharisees. The pupils would rely on the authority of the teachers believing that they were in possession of valid proofs for their Halakot, although they did not mention them. On the other hand, the Sadducees could never successfully refute the Halakot thus

with the Sadducees, must of course have been stronger. The saying of R. Eliezer: מנעו בניכם מן ההגיון והושיבום בין ברכי תלמידי חכמים (Berakot 17 b), probably expresses this tendency to make the young pupils study more the traditional law at the feet of the teachers, and keep them away from studying the scriptural proofs and the arguments for the traditional laws. A very striking illustration of this tendency among the earlier teachers is found in the report of a conversation between Ishmael and R. Joshua b. Ḥananiah. Ishmael asks R. Joshua to tell him the reason for a certain rabbinical law. Joshua, apparently unwilling to state the real reason, gives him an evasive answer. This does not satisfy Ishmael, and he persists in demanding an explanation. Joshua, instead of replying, simply ignores the question, drops the subject, and begins to discuss another subject (M. Abodah zarah II, 5). The Gemara (35 a) reports further that Joshua actually commanded Ishmael to stop asking questions about this Law. He plainly told him, חשוק שפתיך זו בזו ואל תבהל להשיב 'Close your lips and be not so anxious to argue'. The Gemara then gives the following explanation for this rather harsh rejoinder. It was a rule with the teachers in Palestine not to give a reason for a new law until at least one year after it was decreed. They feared that some people, not approving of the reason, would disregard and treat lightly the law itself: דילמא איכא אינש דלא ס״ל ואתי לזלזולי בה. These words are significant. There was only one class of people who might disapprove the reasons of the Rabbis, and these were the followers of Sadducean doctrines. Ishmael must have been a very young student at that time (see Midrash Shir r. I, 2), and R. Joshua did not want to give him the reason for this new rabbinical law, for fear that some of the opponents of the traditional law might be able to prove to young Ishmael that the reason for this law was insufficient. (Compare Joshua's remark against those who question the authority of the traditional law, to be cited below, note 78.)

taught. Not knowing on what basis they rested or what proofs the Pharisees offered for them, they were unable to argue concerning them. Their attacks on these Pharisaic teachings would then consist of mere negations without the force of strong argument. As mere negations are not convincing, such attacks on the part of the Sadducees could not greatly harm the Pharisaic followers.

The teachers, all of the Pharisaic party, were influenced by still another consideration. The tendency to teach only in Midrash-form, showing that all the religious teachings were lodged in the written Torah, threatened to take away from the Pharisaic teachers their prestige and to lend support to the claim of the Sadducees that there was no need of the חכמי ישראל, i.e. the teachers of the Pharisaic party. In the report about the conflict between John Hyrcanus and the Pharisees (Ḳiddushin 66 a) we are told that the former, at first, hesitated to persecute the חכמי ישראל of the Pharisaic party because he considered them indispensable as teachers of the Law. He is said to have asked תורה מה תהא עליה 'What will become of the Torah' without the Pharisaic teachers? But his Sadducean adviser, who urged the persecution of the Pharisees, told him הרי כרוכה ומונחת בקרן זוית כל הרוצה ללמוד יבא וילמוד, that the Torah would remain, even if the Pharisees would be killed.[73] Also that any one could study it because the Pharisees were not the only

[73] It makes very little difference whether this story is historically true in all its details or not. It reflects the idea of the Sadducees that the Pharisaic teachers could be dispensed with, and also the insistence of the Pharisees that they were absolutely necessary for the preservation of the Torah. The story mirrors for us the fears that the Pharisees entertained. As we are concerned merely with the motives that prompted the Pharisaic teachers to make the change in the form of their teaching, this story may be taken as an unconscious but accurate description of the consideration which could have moved them.

teachers of the Law. If, then, all the teachings and the Halakot were represented as derived from the Torah by means of interpretation, as is done in the Midrash-form, this claim of the Sadducees would appear justified. There would, indeed, be no need of the חכמי ישראל, of the Pharisaic party. Any one else could likewise interpret the law correctly and derive from it all the Halakot that are implied therein, for a thorough understanding of the text of the written Law was certainly not limited to the Pharisees. Thus the aim of the Pharisees to assert their authority and to show that they were absolutely necessary for the perpetuation of the religious teachings made it desirable for them to use the Mishnah-form. Even if there had been no objections to their new methods and even if they had been able to find scriptural proofs for all their decisions, they nevertheless thought it advisable not to insist upon connecting their halakic teachings with the written Law in every case. By separating the two, they made themselves indispensable. If there were Halakot not connected with the written Law, one must turn for these teachings to the חכמי ישראל, who alone were in possession of them, and who could not therefore be supplanted by others.

That which was at first but hesitatingly proposed, viz. that there was an oral law alongside of the written Law, was now boldly proclaimed. The Pharisaic teachers were represented as the teachers of tradition who received the oral law through a chain of teachers in direct succession from Moses. Consequently they were the only reliable authorities for the religious teachings. They insisted that their decisions must be accepted as authoritative, with the understanding that they either derived them from some passage in the Scripture by sound interpretation or based

them upon some reliable tradition. The existence of valid proofs was always presupposed. Where no proofs were given, it was implied that they were unnecessary, as the authority of the teachers was beyond doubt. This tendency of the teachers to assert their authority and to maintain the validity of the traditional law did not have its motive in any petty desire for party aggrandizement, but rather in a genuine zeal for the cause, as they understood it. They asserted their authority and the authority of the traditional law for the purpose of freeing the Torah from the fetters of literal interpretation forced upon it by the Sadducees, and developing the Law according to its spirit.

All these considerations caused the teachers to make more and more use of the Mishnah-form, but were not sufficient to make them abandon the Midrash-form. The Midrash-form still had many advantages. It was the older form to which they had long been accustomed. It also afforded a great help to the memory, as the written word can be relied upon to remind one of all the Halakot based upon or connected with it. Consequently they used both forms. Those Halakot which were based upon a sound and indisputable interpretation of a scriptural passage they taught in the Midrash-form, i. e. in connexion with the scriptural proofs, and they arranged them in the order of the scriptural passages. But those Halakot for which the scriptural proofs were in dispute, they taught in the Mishnah-form and grouped them according to some principle of arrangement, such as number-mishnahs or other formulas, for the purpose of assisting the memory. In the course of time, the number of the Halakot taught in the Mishnah-form grew in proportion to the increase and the development of the halakic teachings. A great many of the new Halakot,

both new decisions and new applications of older laws, were taught in the Mishnah-form by some teachers, because they could not find satisfactory scriptural support for them. It will be recollected that the decisions of Jose ben Joezer were given in the Mishnah-form for the same reason.

The process of development from the Midrash of the Older Halakah to the Midrash of the Younger Halakah was marked by constant struggles, in which the older methods tried to maintain themselves as long as possible. In each generation (at least until the time of the pupils of R. Akiba) the teachers were divided as to the acceptance of these new methods. Some teachers clung to the older ways and would not follow the daring applications of some new rules of the younger teachers. With the growth and development of the new methods, which only slowly and gradually won recognition with all the teachers, the number of Halakot connected with the Scriptures by means of these new exegetical rules, also grew. Such Halakot were then taught by different teachers in different forms. Those teachers who approved of all the new methods consequently considered the interpretations reached by these methods as sound, and the Halakot proved thereby as well founded in the Written Law. Accordingly, they would not hesitate to teach these Halakot together with their proofs, that is, in the Midrash-form. But those teachers who hesitated to accept the novel methods and the new interpretations based thereon, but who still accepted the Halakot, did so because they considered them as traditional, or because the same represented the opinion of the majority. Having no sound proofs, in their opinion, for these Halakot, they were compelled to teach them in the Mishnah-form, without any scriptural proof.

We find many such cases in the tannaitic literature. Of these we shall mention only a few; in Sifra, *Zaw* XI (ed. Weiss 34 d–35 a), R. Akiba tries to prove by one of his peculiar methods of interpretation that a 'Todah'-offering requires half a 'log' of oil. But R. Eleazar ben Azariah said to him: 'Even if you should keep on arguing the whole day with your rules about including and excluding qualities of scriptural expressions, I will not listen to you. The decision that a "Todah"-offering requires half a "log" of oil is to be accepted as a traditional law.'[74] אפילו אתה אומר כל היום כולו בשמן לרבות בשמן למעט איני שומע לך אלא חצי לוג שמן לתודה הלכה למשה מסיני. The emphatic expression איני שומע לך 'I will not listen to you', in the statement of Eleazar b. Azariah shows that he strongly objected to Akiba's method of interpretation, and that he considered such proof, not merely unnecessary, but also unsound. If Eleazar was actually in possession of a tradition for this law, it would have been sufficient to say אינו צריך 'There

[74] It is very doubtful whether R. Eleazar b. Azariah himself used the term הלכה למשה מסיני to apply to this law (notwithstanding Bacher, 'Die Satzung vom Sinai', in *Studies in Jewish Literature published in honour of Dr. K. Kohler*, Berlin, 1913, p. 58). It is more likely that the words למשה מסיני are a late addition and not the words of R. Eleazar. R. Eleazar said merely that this rule was a traditional or rabbinical law, הלכה. A later teacher, who understood the term הלכה to mean 'Sinaitic Law', added the words למשה מסיני. There are many such instances where a later teacher enlarges the term הלכה, used by an older teacher, to הלכה למשה מסיני, simply because he, the later teacher, understood the term הלכה in this sense. But this interpretation, given by a later teacher, to the term הלכה which was used by an older teacher, is not necessarily correct. Thus, for instance, the term הלכה used in the statement of the Mishnah והערלה הלכה (M. Orlah III, 9) is interpreted by R. Johanan to mean הלכה למשה מסיני (p. Orlah 63 b, b. Ḳiddushin 38 b–39 a), while Samuel explains it merely to mean simply a law or custom of the land הלכתא מדינה (*ibid.*).

is no need of scriptural proof'. It is evident that this Halakah could not be based on an indisputable traditional law.[75] R. Akiba, therefore, desired to give it support by proving it from the Scriptures. He, no doubt, taught it in the Midrash-form together with the passage from which he endeavoured to prove it. But R. Eleazar b. Azariah, who did not approve the interpretation of R. Akiba, although he accepted the Halakah, naturally taught it as a traditional law, and, of course, in Mishnah-form.

Another example is to be found in the reasoning used to justify the ceremony performed with the willow, ערבה. This, no doubt, was an old traditional custom. Abba Saul, however, declared it to be a biblical law, deriving it from the plural form ערבי נחל used in the passage of Lev. 23. 40. This passage, according to Abba Saul, speaks of two willows. One is to be taken together with the Lulab, and the other separately for the special ceremony with the ערבה. Abba Saul, no doubt, taught this Halakah in the Midrash-form as an interpretation of the passage in Lev. 23. 40. The other teachers, however, did not accept this interpretation. They considered this ceremony a mere traditional law, הלכה למשה מסיני (Jerush. Shebiit 33 b), and, of course, taught it in the Mishnah-form.

[75] It is absolutely impossible to assume that R. Akiba refused to believe the statement of R. Eleazar b. Azariah that he had a tradition in support of this law. The contrary must, therefore, be true. R. Eleazar rejected the Midrashic proof given by R. Akiba but accepted the law as a mere הלכה, i. e. as a rabbinical or traditional law. It may be, however, that this law was really an older traditional law, though not הלכה למשה מסיני, and that R. Akiba tried to give it a scriptural support while R. Eleazar preferred to teach it as a detached Halakah, i. e. in Midrash-form. Compare the statement in Niddah 73 a in regard to another law which R. Akiba derived from a scriptural passage, while R. Eleazar b. Azariah preferred to teach it as a mere Halakah, לרבי עקיבא קראי לרבי אלעזר בן עזריה הילכתא.

The same was also the case with the ceremony of the water-libation, נסוך המים, which R. Akiba, by means of a forced interpretation, tried to represent as a biblical law. The other teachers did not accept his interpretation. They considered it merely a traditional law, הלכה למשה מסיני (*ibid.*), and, of course, taught it in the Mishnah-form. In this manner, the same decisions were sometimes taught by some teachers in the Midrash-form, while other teachers taught them in the Mishnah form.[76] Thus the two forms continued in use according to the preference of the teachers. The parallel usage of these two forms continued long after Sadduceeism had ceased to be an influential factor in the life of the people, and the Pharisaic teachers had become the only recognized teachers of the Law. The Mishnah-form was retained by the teachers even after the new methods of interpretation had become generally accepted. In spite of the fact that these methods were developed to

[76] The very frequency with which the Amoraim declare scriptural interpretations of the Tannaim to be merely artificial supports, אסמכתא בעלמא, for rabbinical or traditional laws (see Bacher, *Die exegetische Terminologie der jüdischen Traditionsliteratur*, II, pp. 13–14), shows that it must have been frequent among the Tannaim to consider some interpretations as mere artificial supports and not real proofs. Otherwise, the Amoraim would not have doubted the validity of a tannaitic Midrash. It was only because they knew that the Tannaim themselves had frequently rejected a Midrash as unacceptable, that the Amoraim dared declare that some tannaitic interpretations were merely artificial supports.

Perhaps we have in the expressions מדרבנן וקרא אסמכתא בעלמא and הילכתא גמירי לה וקרא אסמכתא בעלמא an attempt at harmonization on the part of the Amoraim for the purpose of explaining away the differences of opinion between the older teachers. They mean to tell us that the older teachers always agreed as to which laws were traditional and which were derived from the Scriptures by means of interpretation. However, in the case of certain traditional laws, some of the teachers sought to find an additional artificial support for the same for the mere purpose of connecting them with the Scriptures—not because they doubted their traditional character.

such an extent that one could interpret any passage to mean almost anything, and thus provide scriptural proofs for all possible decisions, the teachers, having habituated themselves to the Mishnah-form adhered to it. An additional reason for its retention may be found in the fact that the Mishnah-form itself had in the meantime improved. It lent itself to new principles of arrangement and grouping which gave it decided advantage for systematic presentation of the Halakah, and thus made it a desirable form of teaching.[77] The teachers themselves having in the meantime become accustomed to the idea of an oral law equal in authority to the written Law, now considered it unnecessary to seek scriptural proof for each and every law. They would occasionally even separate Halakot, based upon sound scriptural proofs, from their Midrash bases for the purpose of presenting them more systematically in Mishnah-form. R. Akiba, the boldest advocate of new Midrash-methods, was himself the one who helped to retain the Mishnah-form by improving it and introducing therein the principle of topical arrangement.

Thus, out of the one form evolved our Mishnah, a collection of Halakot in independent form arranged topically. Out of the other developed our halakic Midrashim, Mekilta, Sifra, and Sifre, which furnish a running commentary on the Books of the Law.

[77] This may seem as if we accepted the view of Frankel and Weiss about the advantages offered by the systematic arrangement of the Mishnah. But it was only after the Mishnah had been long in use and developed its system of grouping that it could be deemed advisable to arrange all the Halakot in Mishnah-form, while Frankel and Weiss assume that these advantages offered by the Mishnah in its later stage only were the cause of the change from Midrash to Mishnah. This, of course, is wrong, as the earlier Mishnah did not offer these advantages.

III

In the above we have ascertained the date and the reason for the introduction of the Mishnah-form, and have traced its gradual adoption by the teachers. Now that we know the motives for its first use, and the causes for its extensive adoption, we may be able to explain the strange silence of the talmudic-rabbinic sources concerning this significant change in the form of teaching and all its important consequences.

For this purpose we need only to review the main points in this whole process and examine them with reference to their possible effect upon the theories of the later Rabbis. We shall then be able to judge whether these later teachers had cause for ignoring these facts and for remaining silent about them.

We have found that the first motive for teaching independent Halakot in the Mishnah-form was the fact that during a period of time when there was no official activity of the teachers, certain customs and practices came to be observed by the people. These customs and practices subsequently had to be recognized and taught by the teachers as religious ordinances, although no proof or scriptural basis for them existed. This means that certain religious practices, considered by the later teachers as part

of the traditional law, or as handed down from Moses, originated in reality from other, perhaps non-Jewish, sources, and had no authority other than the authority of the people who adopted them. This, of course, reflects unfavourably upon the authority of the traditional law in general. We have, furthermore, seen that the teachers themselves could not agree in regard to the origin of certain laws. While some teachers endeavoured to find artificial supports for these laws, using even forced interpretations for the purpose of giving them scriptural endorsement, others preferred to accept them as traditional laws, presumably of ancient Jewish origin. This disagreement among the earlier teachers in regard to the origin and authority of certain laws speaks very strongly against two fundamental theories of the later talmudic teachers,—theories that were considered almost as dogmas. One is the belief in an oral law, תורה שבעל פה, handed down from Moses together with the written Torah. The second is the belief in the validity of the laws which the wise teachers derived from the Torah by means of their new interpretations, מדרש חכמים. The disagreement noted above shows unmistakably that in earlier times these two theories were disputed and neither was accepted by all the teachers. For some teachers hesitated to recognize the authoritative character of certain laws merely on the ground that they were traditional. Therefore they felt constrained to seek proofs for these laws in the Torah. On the other hand, there were teachers who objected to the validity of the new interpretations by which certain laws were proved from Scriptures. They pinned their faith to the traditional character of these laws. Thus these earlier differences between the teachers could be used as a strong argument

against the authority of their teachings. This fear was actually entertained by the later teachers.

Again, we have seen, that one of the motives for using the Mishnah-form was the desire on the part of the Pharisaic teachers to assert their authority and indispensability. This is apparently at variance with another theory of the Talmud, viz. the belief that from Moses until the Tannaim there was an uninterrupted succession of teachers of the law, recognized as the chief religious authorities whose direct and undisputed successors were the Pharisees. However, the fact that the early Pharisaic teachers had to assert their authority against the opposition of the Sadducees, shows that these teachers were new claimants to authority. This fact, as we have seen, reveals the true state of affairs, viz. that the priestly teachers, the Sadducees, were originally the authoritative teachers, whom the Pharisees subsequently tried to supplant.

Thus, we see that the real conditions which accompanied the change from Midrash to Mishnah cast many unfavourable reflections upon the theories and views held by the later Pharisaic teachers, the Rabbis of the Talmud. We can, therefore, well understand the silence of the Rabbis about this important change. They did not care to dwell upon facts which, if misunderstood, would reflect on their theories. They hesitated to refer too frequently to circumstances from which some people might, by misinterpretation, draw such conclusions as would shake the foundation of the whole system of the traditional teachings.[78]

[78] That the Pharisaic teachers had such apprehensions is evident from the following saying of R. Eleazar b. Azariah (or, according to Rashi, R. Joshua b. Ḥananiah) in Ḥagigah 3 b: ובמסמרות נטועים כוה נטיעה זו פרה ורבה אף דברי תורה פרין ורבין בעלי אסופות, אלו תלמידי חכמים

This was not done with the intention of suppressing historic facts, as they indeed mentioned these facts. They would speak of them to those pupils who were prepared to see things in their proper light, and were not disposed to misinterpret them. They deemed it unwise to discuss these matters before the pupils at large, fearing that there might be among them some who could be misled by opponents and thus arrive at erroneous conclusions. This is a course of conduct followed by the teachers in regard

שיו״ב אסופות אסופות ועוסקין בתורה הללו מטמאין והללו מטהרין הללו אוסרין והללו מתירין הללו פוסלין והללו מכשירין. שמא יאמר אדם האיך אני למד תורה מעתה? תלמוד לומר כולם נתנו מרועה אחד, אל אחד נתנן פרנס אחד אמרן מפי אדון כל המעשים ברוך הוא (compare also Num. r. XIV, 4). We have in this saying both a defence on the part of the Pharisaic teachers for making the Torah grow and increase so as to contain more than its plain words warrant, as well as a refutation of the arguments advanced against them that their very disagreement in many questions speaks against their having reliable traditions. Against this accusation the Pharisaic teachers insist that all their teachings come from the same source, the same leader, פרנס, Moses gave them in the name of God. We see from this that such arguments were raised against the Pharisees by their opponents, for the phrase, שמא יאמר אדם 'Lest some might say', is here not meant altogether in a hypothetical sense. It refers to certain people who actually raised the question. Compare the saying: יצתה בת קול ואמרה אלו ואלו דברי אלהים חיים והלכה כבית הלל 'A heavenly voice was heard declaring that both the words of the School of Hillel and the words of the School of Shammai [despite their disagreements] are the words of the living God, but the practical decision should be according to the words of the School of Hillel' (Erubin 13 b). Compare also the passage in Gittin 6 b, where Elijah is reported to have said that God declared both the opposing views of R. Abiathar and R. Jonathan to be the words of the living God. All these utterances were intended to serve as a refutation of the attacks made against the teachings of the Rabbis on account of their disagreements. We see from these covert replies of the Rabbis that the arguments of the Karaites against the Rabbanites (see below, note 85) were not original with the Karaites, but were repetitions of older arguments.

to still other subjects which they likewise deemed unsafe to communicate to the public at large.[79]

This course was not altogether culpable, seeing that it was animated by no selfish motive, and that it was pursued for the sake of the cause which the Rabbis wished to serve. They were desirous of having their teachings accepted by the people as authoritative. They therefore refrained from dwelling upon the fact that there was once a time when some people did not accept these teachings as authoritative. Instead of reporting in detail the earlier struggles of the Pharisaic teachers for recognition, and their disputes with their opponents, they dwelt more frequently on the continuous chain of tradition by which they received their teachings. They mentioned only those teachers and members of the Sanhedrin who were of the Pharisaic party, whom they considered as having always been the true religious leaders of the people. They quite overlooked the fact that their opponents, the Sadducees, were the ruling authorities in former times. Instead of making explicit mention of the origin of the Mishnah-form, which would reveal the late date of so many traditional laws, they assumed the fact that the two Laws, the written and the oral, were both handed down by Moses through the agency of an uninterrupted chain of true teachers, the bearers of tradition. The result was that to most of the later teachers, especially the Amoraim, the origin and development of the Mishnah-form was almost unknown.

[79] The same was done with the records of the families which the Rabbis did not care to teach or discuss in public, fearing to cause unpleasant controversies. They would hand them over to their chosen pupils (b. Ḳiddushin 71 a). The same was the case with certain ineffable names of God which they communicated only to a few chosen pupils, lest the multitude misunderstand the significance of these names (*ibid.*).

The time when this change was made, the motives that caused it, and the circumstances that accompanied it, were almost forgotten. They were known only to a very few of the later teachers. These, like their predecessors, the early teachers, did not care to speak about them. The later Tannaim, and even the Amoraim, had the same reasons for avoiding the mention of these conditions that led to the adoption of the Mishnah-form as had the earlier Pharisaic teachers for their silence about these facts. Just as the earlier Pharisaic teachers, so the later teachers, i. e. the Rabbis, had to contend with more or less opposition. They had to combat those who denied their authority and rejected their teachings, i. e. the traditional law.

After the destruction of the Temple and the dissolution of the Jewish state, the Sadducees ceased to be a powerful party and lost their former influence among the people. However, it would be a mistake to assume with Büchler (*Der galiläische Am ha-Arez*, Wien 1906, p. 5) that in the beginning of the second century C. E. the Sadducees had altogether disappeared. They continued, if not as an influential party, nevertheless as a group of people holding peculiar views about the Torah, denying the binding character of the traditional law and rejecting the authority of the Rabbis who were the advocates of that traditional law. We have evidence of their existence throughout the entire tannaitic period.[80] Many sayings of the later

[80] R. Jose b. Halafta declares (M. Niddah IV, 2) that the daughters of the Sadducees are to be considered as daughters of Israel, except in cases where we know that they are determined to follow in their observance the ways of their forefathers (i. e. the former Sadducees). The reason for this view of R. Jose is found in his other saying where he states the following: בקיאין אנו בהן יותר מן הכל והם מראות דם לחכמים חוץ מאישה אחת שהיתה בשבונתינו שלא הראתה דם לחכמים ומתה 'We are

Tannaim refer to them, though they do not always designate them expressly by the name Sadducees. They even

very well informed about them. They all show their blood to the wise teachers (i. e. the Rabbis). There was only one [Sadducean] woman in our neighbourhood who would not do so, but she is dead now' (Tosefta V, 3, b. Niddah 33b). Buechler (*JQR.*, 1913, 446) erroneously takes this saying of R. Jose to be merely another version of what the high priest's wife told her husband. Such an interpretation of R. Jose's saying is absolutely unwarranted. R. Jose describes conditions prevalent in his own day. He justifies his attitude towards the Sadducean women by the information that, with few exceptions, they follow the Pharisaic regulations in observing the laws of menstruation. This shows that in the time of R. Jose b. Ḥalafta, i. e. about the middle of the second century C. E., there still were Sadducees. Their wives, however, would, in most cases, be guided by the decisions of the Rabbis in regard to the observance of the laws about menstruation. The same R. Jose also says (M. Parah III, 3), אל תתן מקום לצדוקים לרדות 'Do not give the Sadducees an opportunity to rebel (i. e. controvert us in argument)', and this again shows that in his time there were Sadducees who still argued against the teachers.

These Sadducees are also referred to, though not expressly designated by the name Sadducees, in the sayings of other teachers of that time. Thus the passage in Num. 15. 31, 'He hath despised the word of the Lord', is explained by R. Nathan in a Baraita (Sanhedrin 99a) to refer to one who disregards the Mishnah, כל מי שאינו מיצניח על המשנה, that is to say, one who denies the traditional law. In another Baraita (*ibid.*) it is stated that the expression, 'He hath despised the word of the Lord', applies even to such people who would accept the entire Torah as divine but would take exception to a single detail in the traditional interpretation: האומר כל התורה כולה מן השמים חוץ מדקדוק זה מקל וחומר זה מגזירה שוה זה. An anonymous saying in Sifra, Beḥuḳḳotai II (Weiss 111b) interprets the passage, 'But if ye will not hearken unto Me' (Lev. 26. 14), to mean, 'If ye will not hearken to the interpretation given by the teachers', אם לא תשמעו למודרש חכמים. The saying continues and speaks of people who despise and hate the teachers although they accept the laws given on Sinai. All these utterances were certainly not made without provocation. There must have been people who accepted the Torah and disputed the rabbinical laws.

Another teacher, R. Jose b. Judah, living in the second half of the second century, rules that if a Gentile wishes to accept the Law with the exception of even one detail of the rabbinical regulations, we should not admit him as a proselyte (Tosefta, Demai II, 5; Bekorot 30b). This shows that there

lingered on in the time of the Amoraim.[81] Throughout the entire period of the Amoraim there were certain people

must have been Jews who rejected the rabbinical laws. Therefore it could occur to a Gentile that it was possible to become a Jew without accepting all the rabbinical laws.

This is also evident from the following story told in Jerushalmi, Shebiit IX, 39a. A certain man who disregarded the regulations regarding the sabbatical year instructed his wife to be careful in separating the priest's share from the dough (ḥallah). His wife, to whom this conduct seemed inconsistent, asked him why he insisted on the observance of the ḥallah-law when he was disregarding the law about the sabbatical year. His answer was: The law of ḥallah is biblical, the regulations about the sabbatical year are rabbinical, having originated with R. Gamaliel and his colleagues, חלה מדבר תורה שביעית מדרבנן נמליאל והבירו. This shows beyond any doubt that there were people who observed the Torah strictly but who denied the validity of the rabbinical teachings.

[81] R. Ḥanina and Abba Areka (Rab), Amoraim of the first generation (first half of the third century c. E.), describe the Epicuros as one who despises the teachers, המבזה תלמידי חכמים (b. Sanhedrin 99b). R. Joḥanan, an Amora of the second generation, and R. Eleazar b. Pedat, an Amora of the third generation (second half of the third century), characterize the Epicuros as one who says (in a tone expressive of contempt), 'That teacher', כהָן דאמר, or as one who says, 'Those Rabbis', כהָן דאמר אהן ספרא אילין רבנין (p. Sanhedrin X, 27d). Buechler makes the mistake of reading כֹּהֵן instead of כָּהָן, and therefore makes the saying refer to 'a priest' who uses that contemptuous expression about the Rabbis (*Der Galiläische Am ha-Arez*, p. 187). This is palpably wrong. The same characterization of the Epicuros is given by R. Papa, an Amora of the fifth generation (second half of the fourth century): כגון דאמר הני רבנן (b. Sanhedrin 100a). R. Joseph, an Amora of the third generation, applies the name Epicuros to a class of people who say, 'Of what use have the Rabbis been to us', כגון הני דאמרי מאי אהנו לן רבנן (*ibid.*). Raba, an Amora of the fourth generation (first half of the fourth century), refers to a certain family of Benjamin the physician who said, 'Of what use have the Rabbis been to us; they have never allowed a raven or forbidden a dove' (*ibid.*). This is a saying which seems to express that we do not need the Rabbis, the biblical laws being clear enough. These people lived according to the Law, and as stated in the Talmud (*ibid.*) would occasionally consult Raba concerning some ritual question. Their ridiculing remark about the Rabbis was evidently the expression of their peculiar attitude towards the teachings of the Rabbis and of their opposition to the latter's authority.

who upheld the views and ideas of the old Sadducees. They were opposed to the authority of the Rabbis, and rejected their teachings. They were no longer called Sadducees. They were designated as 'Epicureans', אפיקורוס, or referred to without any special name, merely as 'people who deny the authority of the Rabbis and reject the traditional law'. These anti-rabbinic elements of the talmudic period formed the connecting link between the older Sadducees and the later Karaites.[82] Knowing, that the Sadducean tendencies continued throughout the entire period of the Talmud, and had both open and secret advocates, we can readily understand why the talmudic teachers hesitated to report indiscriminately all the details of the disputes between the Pharisees and Sadducees, and also all the differences of opinion and the disagreement as to methods among the Pharisees themselves. All these, as we have seen, were the causes that led to the adoption of the Mishnah-form. The talmudic teachers were careful not to place weapons in the hands of their opponents.

Thus the strange fact is explained why no explicit report about this matter was preserved in the talmudic literature. Only a few occasional remarks which escaped the teachers hint at the actual historic conditions, and they show us that a knowledge of the real facts did exist among some of the teachers.

The Geonim, likewise, seem to have had a purpose in avoiding the mention of these significant points in the historic development of the Halakah. When occasionally

[82] Compare Friedmann in his Introduction to the Seder Eliahu Rabba, &c., Wien 1902, pp. 97–8, and Harkavy, *Zur Entstehung des Karaismus*, in Graetz's *Geschichte*, V, pp. 472 ff.

forced to speak about the same, they reveal by their very reticence as much as by their casual remarks that they had knowledge of the facts. We pointed out above the awkward pause in the letter of R. Sherira Gaon. In answer to the question of the people of Kairuan regarding the origin of the Mishnah and the Sifra and Sifre, the Gaon was compelled to speak about the Midrash and the Mishnah. He barely touches upon the subject of the Midrash, saying merely that this was originally the exclusive form. Here he stops abruptly and turns to another subject, viz. the Baraita collections of R. Hiyya and R. Oshaya. We might assume that something is missing in the text of the letter.[83] This, however, is improbable. It is almost evident that R. Sherira broke off in the middle of a thought, because he deemed it unwise to say any more about the adoption of the Mishnah-form in addition to the Midrash.

This reluctance on the part of the Geonim to speak about this subject is more noticeable in the responsum of R. Zemaḥ Gaon. The people of Kairuan inquired of R. Zemaḥ Gaon regarding the attitude to be taken towards Eldad. Eldad reported that in the Talmud of his own people the names of individual teachers were not mentioned. As in our Talmud differences of opinion and names of individual teachers are mentioned, they found this report of Eldad very strange. Zemaḥ answered that this was not a reason for doubting the character of Eldad and his teachings, because the method described by Eldad was indeed the earlier mode of teaching. He states that in the time of the Temple, when they taught all the traditional law in the Midrash-form, they did not mention the names

[83] See above, note 9.

of individual teachers.[84] Now, this would seem to be a sufficient answer, and he should have stopped here. But R. Zemaḥ Gaon adds the following significant words: והתורה אחת היא בין במשנה בין בתלמוד ומפעין אחד הכל שותין ואין נכון לפרש כל דבר, שנאמר כבוד אלהים הסתר דבר 'The Torah is one. It is embodied in the Mishnah and in the Talmud. All draw from one and the same source. It is not advisable to explain everything, for it is said: It is the glory of God to conceal a thing (Prov. 25. 2).' Why this mysterious admonition, and what was the secret he sought to hide? The account of the origin of the Mishnah-form, given above, will help us to understand the need for the admonition and the nature of the secret. The Karaites in the time of the Geonim denied that the teachings of the Mishnah and Talmud embodied the true tradition. They characterized these teachings as later rabbinic inventions. In support of their attitude they instanced the numerous disagreements and frequent disputes of the Rabbis of the Talmud. They argued, How could there have been tradition among the teachers when there was no agreement among them as to their teachings and Halakot.[85]

We have seen above that the history of the development of the Mishnah-form reflects unfavourably upon the traditional character of the Pharisaic teachings. This was the reason for the talmudic silence about the origin of the Mishnah-form. The Geonim were silent on this point for the same reason. Neither Zemaḥ nor Sherira wanted to state exactly how long the Midrash continued in exclusive

[84] See above, note 33.

[85] See, for instance, the arguments used by Sahl ben Mazliaḥ (Pinsker, *Liḳḳute Ḳadmoniyyot*, Nispaḥim, pp. 26, 35). The same arguments are raised by many other Karaitic writers.

use, for it would have shown that the Mishnah was of comparatively late origin, and that its adoption was due mainly to the differences of opinion that arose between the Pharisaic teachers and the earlier authorities, the Sadducees. When compelled to refer to the time when Midrash was in exclusive use, both Zemaḥ and Sherira used the vague term במקדש 'in the Temple times'. This, however, as we have seen, can refer only to the time before the division of the parties.[86]

[86] It is possible that the use of the term במקדש in this peculiar sense was suggested to Zemaḥ and Sherira by a passage in Mishnah Berakot IX, 5, where the term is likewise used in referring to a custom that was prevalent in the Temple during the time previous to the division of the parties. The passage in the Mishnah reads as follows: כל חתמי ברכות שהיו במקדש היו אומרים מן העולם מישקלקלו הצדוקים ואמרו אין עולם אלא אחד התקינו שיהיו אומרים מן העולם ועד העולם. [The text in the editions of the Mishnayot reads מישקלקלו המינים, but in the Talmud-editions the reading is מיצקלקלו הצדוקים, which is the correct reading. Compare A. Schwartz, *Tosifta Zeraim* (Wilsa, 1890), p. 57, note 189.] Here we have the report of a Pharisaic regulation aimed against the Sadducees who rejected the belief in a future world. Here the term במקדש, while designating the place, i. e. the Temple, also includes an element of time. 'In the Temple' evidently refers to the time prior to this Pharisaic regulation, i. e. prior to the division of the parties. The Pharisaic regulation reported in this passage originated in the very early days of the differences between the Sadducees and Pharisees, and not as Buechler (*Priester und Cultus*, p. 176) assumes, in the last decade of the existence of the Temple. This is evident from the fact that in the same paragraph the Mishnah reports another regulation which no doubt originated in the early days of the differences between the priests and lay teachers. This other regulation prescribed that a man should use the name of God in greeting his neighbour. This was either a reaction against the religious persecution under Antiochus when it was forbidden to mention the name of God (comp. b. Rosh ha-Shanah 18b and Meg. Taanit VII), or according to Geiger (*Jüdische Zeitschrift*, V, p. 107; comp. also *Urschrift*, pp. 264 ff.) it was to emphasize the claim of the Pharisees to use the name of God as the priests did. Anyhow, this second regulation originated in the very earliest days of the division of the parties. From this we may conclude that the first regulation also originated at the same time. It is quite evident that the author of this report in our

Sherira, who was merely asked about the origin of the Mishnah and the halakic Midrashim, could easily avoid mentioning anything he did not desire to state. He limited himself to answering the questions put before him. He stated that the Midrash was the earlier form, used exclusively in the earlier days of the second Temple. He was careful, however, not to define this period. He also told them the history of the Mishnah. He could well refrain from stating why the Mishnah was introduced as an additional form to the Midrash, for he was not expressly asked about this point. His questioners did not ask why a change in the form of teaching was made, and probably did not know that the Mishnah-form was the result of such an important change. Sherira did not find it necessary to enlighten them about this point.

R. Zemaḥ found himself in a more difficult position. He was compelled to commit himself to some extent. He was expressly asked why in Eldad's Talmud no names are mentioned, while in our Talmud many names of debating teachers, representing conflicting opinions, are found. This question implied a doubt in the minds of the questioners concerning the authority of our Talmud. R. Zemaḥ had to address himself to this doubt. He first admits that originally all teachings were given in the Midrash-form. Since in this form all teachings are presented as interpretations of the written Torah and not as opinions of the teachers, the names of the teachers were therefore not mentioned. He also avoids definite dates, using like Sherira the vague term 'in Temple times' to designate the period of the exclusive use of the Midrash. However, he still

Mishnah mentions these two regulations in the same paragraph to denote their simultaneous origin.

fears that the people might be led to doubt the traditional character of the Mishnah on account of the disputes and opposing views of individual teachers that are found in it. He therefore admonishes the questioners to entertain no doubts about the Mishnah and the Talmud, but to consider them as coming from the same source as the written Torah and as being one with the Torah. This admonition of R. Zemaḥ Gaon is a warning against the Karaites of his day. It is of the same character as the warning uttered by Joshua b. Ḥananiah (Ḥagigah 3 b) against the Sadducees of his own time.[87]

The result of our inquiry into the cause of the talmudic-rabbinic silence about our subject may be summed up in the following conclusions. The early Pharisaic teachers refrained from pointing to the causes for the adoption of the Mishnah-form, and to its effects upon the development of the Halakah, in order not to strengthen the position of their opponents, the Sadducees. The later talmudic teachers similarly avoided discussion of these subjects out of fear of those of their opponents who followed the old Sadducean doctrines. The Geonim, in like manner, refrained from mentioning these facts, in order not to place weapons in the hands of their opponents, the Karaites.

[87] At the end of his responsum (Yellinek, *Beth Hamidrash*, II, p. 113) Zemaḥ repeats his warning not to deviate from the Talmud and the teachings of the Rabbis in the following words: וכבר הודענו לכם שמימיין אחר הכל שותין והתחזקו במה שהחכמים דורשין לכם ובתלמוד שילמדו לכם ואל תטו ימין ושמאל מאחרי כל דבריהם שכן כתוב על פי התורה אשר יורוך ועל המשפט אשר יאמרו לכם תעשו. This repetition of the admonition and the citation of the passage in Deut. 17. 11, so often used by the Rabbis is support of the authority of their traditional teachings, further proves that Zemaḥ aimed to allay any disquieting doubts in the minds of the people in regard to the traditional character of the Rabbinical teachings.

IV

Saadya's Statement Concerning the Beginnings of the Mishnah.

In the course of our discussion, we have proved from a talmudic report as well as from certain utterances of the Geonim, that the first introduction of the Mishnah-form took place in the last days of Jose b. Joezer. There is but one gaonic statement about the beginnings of the Mishnah which seems to be at variance with this conclusion. I refer to the statement of Saadya Gaon in his *Sefer Hagaluj* (Schechter, *Saadyana*, p. 5; also quoted by a Karaitic writer, see Harkavy, *Studien und Mitteilungen*, V, p. 194).

This statement of Saadya places the time for the beginnings of the Mishnah soon after prophecy ceased, in the fourtieth year of the second Temple. This is apparently a much earlier date than the time of Jose b. Joezer. A closer examination, however, will show that the period to which Saadya assigns the beginnings of the Mishnah is actually the same as the one which we have found given in the Talmud and indicated by the Geonim R. Zemaḥ and R. Sherira, viz. the time of Jose b. Joezer. It is merely due to the faulty chronology, followed by Saadya, that his date appears to be earlier than the one which we fixed on the basis of the evidence derived from the Talmud and the statements of R. Zemaḥ and R. Sherira.

We must keep in mind that Saadya followed the rabbinic chronology as given in Seder Olam and in the Talmud. This chronology, however, at least in so far as

it relates to the earlier period of the second Temple, is absolutely incorrect. In order to be able to fix the actual time to which Saadya's date refers, we must first point out the peculiarities of the talmudic-rabbinic chronology which he followed. To account for the errors and the confusion in this chronology, it is sufficient to know its character. It is an artificial chronology, constructed by the later teachers for the apparent purpose of establishing a direct connexion between the true teachers of the Law, that is to say, the Pharisees, and the prophets, and thus to prove the authority of the Pharisaic teachers and the traditional character of their teachings. Such a direct connexion between the prophets and the Pharisaic teachers of the traditional law could be established only by utterly ignoring the time during which the priests were the sole religious teachers and leaders, and consequently contracting long stretches of time into short periods. Hence all the inaccuracies in this artificial and faulty chronology.

The Rabbis assume that the Pharisaic teachers received the Law, as well as all their traditional teachings, directly from the prophets. In their chronology, therefore, the prophets are succeeded not by the priestly teachers, the כהנים, but by the חכמים, the wise lay-teachers. This is expressed by the Rabbis in the statement: עד כאן נתנבאו הנביאים ברוח הקודש מכאן ואילך הט לבך ושמע דברי חכמים (Seder Olam Rabba, XXX; comp. also Seder Olam Zutta, VII). By חכמים are evidently meant חכמי ישראל, lay-teachers, or more exactly, Pharisaic teachers, in contradistinction to the priests or Sadducees, the כהנים. This is confirmed by the fact that in passages in the Mishnah and the Tosefta which likewise contain the idea that the wise teachers directly succeeded the prophets, the Zuggot are expressly

mentioned. Thus in Mishnah Peah II, 6 and Tosefta Jadayyim II, 16, we read that the Zuggot, that is to say, the earliest Pharisaic teachers, received traditional laws directly from the prophets, שקיבל מזוגות שקבלו מן הנביאים.

The same idea also underlies the statement in Mishnah Abot I, according to which the Zuggot received the law from the last members of the Great Synagogue. For, according to the Rabbis, this Great Synagogue also included the last prophets among its members. There is only one slight difference between the line of succession as given in M. Abot and that given in M. Peah and Tosefta Jadayyim, namely, that the name of Antigonos is mentioned in the former between the Zuggot and the Great Synagogue. However, in stating the authority from whom the first pair received the Law, the Mishnah (Abot I, 4) uses the words קיבלו מהם 'they received from *them*'. This clearly shows that the first pair, the two Joses, did not receive the law from Antigonos alone. For, if this were the case, the Mishnah would have said: קיבלו ממנו 'they received from *him*'. The expression קיבלו מהם warrants the supposition that the two Joses received the Law from the last members of the Great Synagogue, or perhaps Antigonos was considered to have been the younger colleague of Simon. According to this supposition there is no discrepancy between all these talmudic reports. They all assume that the last members of the Great Synagogue, among whom were also the last prophets, transmitted the Law and the traditions directly to the Zuggot or חכמים, i. e. the earliest Pharisaic teachers.

This transmission of the Law by the prophets to the wise teachers, or the disappearance of the prophets and the rise of the חכמים, the Pharisaic teachers, took place

according to the Rabbis, in the time of Alexander the Great, shortly after the overthrow of the Persian Empire (Seder Olam Rabba and Zutta, *l. c.*). This rabbinic chronology finds no difficulty in extending the time of the last prophets to the end of the Persian period. For by some peculiar error, which we are unable to account for, the Rabbis reduced the entire period of the existence of the second Temple under Persian rule to thirty-four years. They assume that thirty-four years after the second Temple was built, the Persian rule in Judea ceased and the Greek rule began (Seder Olam Rabba, *l. c.*, and Shabbat, 15 a). Accordingly, it was not found strange that Haggai, who urged the building of the Temple as well as the other prophets of his time, should have lived to the end of the Persian period and have handed over the Law and the traditions to their successors, the חכמים, or wise lay-teachers at that time.

How the Rabbis could identify these חכמים with the Zuggot, so that the latter, living in the second century B.C., could be considered the direct recipients of the Law from the last prophets at the end of the fourth century B. C., is not difficult to explain. The Rabbis had a tradition that the High Priest in the time of Alexander the Great was Simon the Just (I) (Yoma 69 a). They also had a reliable report of a high-priest Simon the Just (II) who lived shortly before the time of the Zuggot, either a little before or contemporary with Antigonos. These two Simons they confused with one another. They identified Simon the Just II, who lived about 200 B. C., with Simon the Just I, one of the last survivors of the Great Synagogue who lived at the end of the fourth or the beginning of the third century B. C. In this manner they established a direct

connexion between the prophets who were among the last members of the Great Synagogue and the Zuggot or the חכמים, the wise lay-teachers, who were the fathers of the Pharisaic party. They were probably unaware of the fact that they passed over an interval of an entire century, or it may be that they consciously ignored it, because, as we have seen, there was no official activity of the teachers during that period.

According to this faulty chronology, then, the Zuggot, or the first pair, Jose b. Joezer and Jose b. Johanan, succeeded the prophets, or the last members of the Great Synagogue, and commenced their activity as teachers of the Law shortly after the overthrow of the Persian Empire by Alexander; that is to say, not much later than the year 34 of the second Temple. And it is actually this time, i. e. the time of the two Joses, that Saadya fixes for the beginnings of the Mishnah. The meaning of the passage in Saadya's *Sefer Hagaluj* is now clear, and its date fully agrees with our date for the beginnings of the Mishnah. The passage reads as follows: ויהי כי מלאו למתנה אלף שנים מימי משה איש האלהים לתם יתר הנביאים במלכות מדי ונחתום חזון בשנת הארבעים לבנות הבירה שנית במעט עם בראות הוריגו את ההמון כי נפץ בכל הארץ ויגורו על ההנא לבלתי השכח ויאספו כל מלה אשר העתיקו מני קדם למצוה ולחוק ליהו (לישראל (Schechter suggests the reading ולעדות וימלאום במדע מלואת תכן ויקראו את שמם משנה.

We may, therefore, assume with certainty that Saadya had a correct tradition that the teaching of Mishnah was first begun in the time of the first pair, the two Joses. But, misguided by the erroneous rabbinic chronology which he followed, he puts the date of this first pair in the year 40 of the second Temple.

The conditions which, according to Saadya, caused the

teachers to begin the composition of Mishnah, also point to the time of the two Joses. For, as Saadya assumes, what prompted the teachers to seek to preserve their teachings in Mishnah-form was the fact that the Jewish people were then scattered all over the earth, and the teachers feared that the study of the Law might be forgotten, בראות הורינו את ההמון כי נפין בכל הארץ וינורו על ההגא לבלתי השכח. These conditions actually prevailed in the time of the two Joses. From the Sibylline Oracle III, 271, we learn that about the middle of the second century B. C. the Jewish people had already scattered all over the earth, and were to be found in every land (comp. Schürer, *Geschichte*, III[4], p. 4). Indeed, the decree of the two Joses declaring the lands of the Gentiles unclean (Shabbat 15 a) may have been issued for the very purpose of stopping this extensive emigration of the people into foreign lands (see Weiss, *Dor*, I, p. 99).

Again, from the quotation of Saadya's statement by the Karaitic writer, it would seem that Saadya designated the teachers, who first composed Mishnah, by the name of אבות. If this be so, if Saadya really applied the term אבות to these teachers, he could have had in mind only the earliest Pharisaic teachers, or the Zuggot, who are called in the Talmud (p. Hagigah 77 d) אבות העולם. I am, however, inclined to think that Saadya did not use the term אבות in referring to these teachers. Saadya probably used the term הורינו, as we find it in the Hebrew text (edition Schechter), and which simply means, our forefathers. The Karaitic writer who quotes Saadya's statement translated this Hebrew word הורינו by the Arabic אלאבא.

Our contention that Saadya's date refers to the time

of Jose b. Joezer might be objected to on the ground that according to Saadya (Schechter, *l. c.*) it took about 500 years from the beginnings of the Mishnah to the final completion of our Mishnah. If, then, Saadya's date coincides with the time of Jose b. Joezer, the actual time between the beginnings of the Mishnah and the completion of our Mishnah is scarcely 400 years. This objection, however, can easily be removed. Here again the mistake is due to the faulty chronology followed by Saadya. Having placed the beginnings of the Mishnah, i. e. the time of the first pair, in the year 40 of the second Temple, and assuming that our Mishnah was completed 150 years after the destruction of the second Temple, Saadya had to extend the period of the Mishnah to 530 years. For, according to the talmudic chronology, the second Temple existed 420 years. Accordingly the period of time which elapsed between the year 40 of the second Temple and the year 150 after its destruction was 530 years. This number was actually given by Saadya, as quoted by the Karaitic writer. The copyist, however, by mistake wrote ת״קי = 510, instead of ת״קל = 530 (see Harkavy, *op. cit.*, p. 195, note 6). The number 500 years, לשנים חמש מאות, assigned to the period of the Mishnah in *Sefer Hagaluj* (edition Schechter, p. 5), probably represents a round number, as Schechter (*l. c.*) correctly remarks.